

DATE: February 21, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03017

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

OVERVIEW

Applicant has mitigated security concerns of foreign influence over his wife, stepson, and other relatives who are citizens of a foreign country. Applicant had the courage to leave his country when it was under communist rule. He got political asylum in the US where he has worked for the same company for twenty years. He has been a US citizen since August 1987 and has strong personal and financial ties to the US which on balance reduce the security significance of his overseas investment in a family property and his modest overseas bank account. As his relatives do not have ties to the foreign government, now a parliamentary democracy, and are not agents of a foreign power, it is unlikely that his family members could be coerced to pressure him to chose between loyalty to them and to the US. Clearance is granted.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, ⁽¹⁾ so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 20, 2001. The SOR detailed security concerns in paragraph 1 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in a notarized Answer dated October 19, 2001, where he admitted all allegations and requested a hearing. The case was assigned to Department Counsel. On November 28, 2001, she attested it was Ready to Proceed; on that date the case was assigned to me.

Subsequently, a mutually convenient date for hearing was found. A Notice of Hearing issued on December 13, 2001, set the matter for January 17, 2002, at a location near where Applicant works and lives. At the hearing the Government presented three exhibits which were admitted into evidence (Exhibits 1-3). Applicant testified himself and called one other witness; he offered twelve exhibits (Exhibits A through L) which were admitted into evidence. The transcript (TR) was received on January 28, 2002.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 50 years old, has been employed at his company⁽²⁾ (Company #1) for almost twenty years. In June 1999 he was asked to obtain a security clearance and completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance when another employee retired. As the chief engineer he is responsible for technical developments. Previously, he did not need a security clearance. (Exhibit 1; TR 18-19, 39, 46; 79-80)

Foreign Influence

Applicant was born in Czechoslovakia and lived there until he was thirty years old. In 1975 he received a master's degree in Czechoslovakia. He left Czechoslovakia in April 1981 because his country was a communist country, and he did not agree with the communist policy. Initially, he was granted political asylum in Italy. He emigrated to the United States (US) in January 1982 and was granted political asylum. He immediately started working as a technician for Company #1 in February 1982. He became a naturalized US citizen in August 1987 and has strong ties to the US. After he married in the US in November 1991, his wife, a citizen of the Czech Republic, became a permanent resident of the US. His daughter who was born in October 1992 is a US citizen. He has a home in the US which he restored and expanded. He has also purchased an adjacent property as an investment property. (Exhibit 1, Exhibits B, C, D, E, F, I, J, K, L; TR 18-19, 23-28, 32-33, 35, 38-41, 44, 49-51, 56, 60)

While Applicant describes his ties to his country of origin as "close to none," he admits:

His mother who is 81 and his brother are citizens of and reside in the Czech Republic; however, his mother is retired. His mother used to work in a job where she was responsible for maintenance of a school. His mother came to the US in 1983 to convince him to return, and he declined. His mother and brother visited the US in 1987; he now calls her once a week. He does not have a close relationship to his brother who is four years older than he is; for example, he does not even know where his brother is employed, but knows that he works for a private company, not the government. He visited his mother twice in 2000 as he extended a business trip to other countries to go to the Czech Republic.

In 1991 he met his spouse who is a citizen of the Czech Republic; she applied for US naturalization in May 2001. She had applied earlier but the paperwork was never acknowledged by immigration. She has a mother and stepfather in the Czech Republic. His wife has a dance school in the US.

His stepson who is a citizen of the Czech Republic attends high school in the US. He will not be eligible for US citizenship until after his mother is naturalized.

Applicant has financial interests in the Czech Republic. He owns a building in Prague worth approximately \$200,000 based on the value provided by a real estate agent; the official appraisal when he received it was \$14,000. His mother's family owned rental property which was taken over by the government in 1956 and allowed to deteriorate; after the communist era ended, his mother applied to have the property restored to her, but it was in very bad shape. Since she could not manage it herself, she gave it to Applicant in 1993 when it was worth approximately \$14,000. Because of "red tape" he was not able to begin the renovation until 1998. In order to do the restoration he opened a bank account to pay for the work being done. He maintains a checking account there with a balance that ranges from \$1,200 to approximately \$8,000. He has invested approximately \$45,000 in the property and is in the middle of renovating it. He sees the property as an investment as he does not plan to move there. He hopes to sell it in two years.

(Answer; Exhibits 1, 2, 3; G, H, I, ; TR 19, 28-32, 39-41, 42-44, 46-48, 51-54, 56-59, 62-68, 71-72)

Applicant has substantial financial ties to the US with income over \$100,000 and a 401(k) worth more than \$100,000 as well as a house worth more than \$350,000. (Exhibits J, L; TR 49) Applicant uses his US passport exclusively to travel. (TR 55)

Given Applicant's history and willingness to leave his country when it was under communist rule, he accepted the

danger that his departure might mean for his mother or brother in that earlier era and did not compromise his principles. Since the change⁽³⁾

in government in his homeland in 1989, he believes that there is "not much to worry about" with respect to the potential for immediate family members to be coerced in a way that would pressure him to decide between loyalty to them and to the US. His personal and financial interests in the US are substantially greater than the value of his investments in the Czech Republic. Further, Applicant has a clear commitment to report any attempt to influence him. Any risk of foreign duress or influence on Applicant and/or his immediate family seem to be slight and clearly manageable; and his family has no ties to the government. (Exhibit 3; Exhibits J, L; TR 57-59, 62) He has no intention of ever returning to the Czech Republic to live. (TR 60)

References

A long-time consultant to Company #1 and the former security officer (now retired) submitted letters of support for Applicant. The consultant who has known him for almost twenty years attests that Applicant is a person of the highest integrity and ethical strands. He understands the value of US citizenship. The former security manager who has known him for twenty years found him to be "very trustworthy, knowledgeable and industrious. . . ." (Exhibits A; TR 22, 45-46)

His supervisor at Company #1 for twenty years, who is a vice-president, commended Applicant's extraordinary professional development from an entry level position to a management position. He assessed Applicant as being an outstanding person with respect to his character, honesty and honor. His knowledge of Applicant's present earnings and investments in the US were that their value overshadowed his investment in the Czech Republic. (TR 74-76; 77-79)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

Guideline B - Foreign Influence

The concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

- (1) an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
- (8) A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns include:

- (1) a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(5) Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline B - Foreign Influence

Applicant has rebutted the Government's security concerns over his possible foreign influence raised by his close ties of affection to citizens of a Parliamentary democracy and his investments there. He has a mother and a sibling in the Czech Republic who are citizens there. Applicant has relatively infrequent contacts with his mother with respect to visits there, but he frequently telephones his mother. He has little contact with his brother. His wife, also a citizen of the Czech Republic, is now a US resident and wants to become a US citizen. His stepson is a citizen of the Czech Republic, but cannot become a US citizen until his mother does. Also, Applicant has financial interests in the Czech Republic as his mother gave him an apartment building in 1993, originally valued at \$14,000, but now estimated to be worth \$200,000, which he is in the process of restoring. To do that work he opened a bank account there which has a balance of \$8,000.

The concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security decisions if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Conditions that could raise a security concern and may be disqualifying include: (1) an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country and (8) a substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

However, these security concerns are mitigated by the fact that Applicant's relatives have no ties to their foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties, Applicant is not vulnerable to duress. Further, the extent of his financial interests in the Czech Republic has to be balanced against the substantial financial ties he has in the US with his long-term professional career, his home ownership, and his retirement investments. While he placed a high value on the apartment building which was a gift from his mother, in fact, it is still unrestored and not an asset that would motivate him to be vulnerable to foreign influence. Looking at the property and his bank account in context of his US ties and investments, I conclude that the foreign investment falls within mitigating condition (5): his foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. Given his history and willingness to leave his country when it was under communist rule, when he accepted the danger that his departure might mean for his mother or brother in that earlier era, he does not fit the profile of an individual who would be easily subject to undue influence so as to become a security risk. Further, since the change in government in his homeland in 1989 and the country's democratic political system, he believes that there is "not much to worry about" with respect to the potential for immediately family members to be coerced in a way that would pressure him to decide between loyalty to them and to the US. His interests in the US are greater than the value of his investments in the Czech Republic.

Thus, I think it improbable that his any of Applicant's family members would create a situation that could result in the

compromise of classified information. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Given Applicant's clear commitment to report any attempt to influence him, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable as his family there has no ties to the government. His wife and step-son live in the US with intentions of being US citizens when the law permits. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Acts indicative of foreign influence warrant careful scrutiny. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties to a parliamentary democracy are not of such a nature as to create any tangible risks of undue pressure, so they do not invoke foreign influence concerns. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.d. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1.Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Company #1 has changed names over the twenty years he has worked for them as they were purchased by other companies. (TR 18)
3. Although Applicant did not detail the changes, I take official notice of the fact of the political change in Applicant's homeland:

"With the collapse of Soviet authority in 1989, Czechoslovakia regained its freedom through a peaceful 'Velvet Revolution.' On 1 January 1993, the country underwent a 'velvet divorce' into its two national components, the Czech Republic and Slovakia. Now a member of NATO, the Czech Republic has moved toward integration in world markets, a development that poses both opportunities and risks."

<http://www.cia.gov/cia/publications/factbook/geos/ez.html>

"After the revolutionary events of November 1989 which brought about the downfall of the Communist regime, the entire country faced the uneasy task of resuming its pre-Communist traditions and building a democratic political

system. A wide diversity of political parties were well-established even before the break-up of Czechoslovakia on December 31, 1992. The constitution of the Czech Republic, which became valid on the day of the birth of the new state, explicitly defined civil rights, the relationship between the executive and legislative branches of power, and the independence of the judiciary."

<http://www.czech.cz/czech/political.html>