

DATE: April 12, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13274

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On November 14, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on December 8, 2001, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 30, 2002. A notice of hearing was issued on February 12, 2002. The hearing was held on March 12, 2002, at which the Government presented five exhibits. The Applicant presented five exhibits. The Applicant called one witness and testified on his own behalf. The official transcript (Tr.) was received on March 20, 2002.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (See, Government Exhibit 1).

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the Government's documents. The Applicant is 50 years of age, single, and has a Ph.D in Aerospace Engineering. He is an Aerospace Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United

States.

The Applicant was born and raised in Yugoslavia. He moved to the United States in February 1986, at the age of 38, with a Masters Degree in Aerospace Engineering. By 1994, he had obtained his Ph.D from a prestigious American University. He obtained his United States citizenship in June 1997. He applied for, and was issued a Yugoslavian passport in November 1996, which is still valid. The Applicant also possesses a valid United States passport issued in August 1997, which is valid until 2007.

The Applicant indicates that following his interview with the Special Agent from the Defense Security Service, he tried to surrender his Yugoslavian passport, but did not know where to surrender it, as he had no address. He went to a federal building, and also contacted his company's security office, but was told that they do not accept surrendered passports. The day before the hearing the Applicant contacted the Government's attorney who suggested to him that he turn his passport into the Yugoslavian Embassy. The Applicant testified and provided a Federal Express receipt indicating that on the day of the hearing, he mailed his passport to the Yugoslavian Embassy. (Tr. p. 56 and Applicant's Exhibit A).

The Applicant states that when he travels abroad, he has used his Yugoslavian passport instead of his United States passport. He visits Yugoslavia on a yearly basis. (Tr. p.50). The Applicant explained that,

In any other normal circumstances I would not resort back then during the 1990's, 2000, and 2001 to use Yugoslavian passport traveling to Yugoslavia. But the reason why I think that it was warranted to do this way was that United States together with NATO countries were involved in military operation in Yugoslavia and there were relatively bad sentiment of Yugoslavian people toward foreigners, especially toward the Americans. So I was afraid, you know, to go with the American passport in crossing the borders. I used only that passport to cross Yugoslavian borders. So I didn't use in any way after I got U.S. citizenship Yugoslavian passport anywhere else in the world. So that means that the purpose only was to cross Yugoslavia because of those national conflicts and sentiments of some of the people and I was afraid about my own safety. (Tr. pp. 31-32).

The Applicant admits that he owns a home in Belgrade, Yugoslavia that is worth about \$50,000.00 in United States dollars, that he purchased in 1978 or 1979. When asked whether he would be willing to renounce his Yugoslavian citizenship, the Applicant stated that the problem would be that he would then have to sell his property in Yugoslavia, because the current law in Yugoslavia does not allow foreigners the right to own property. (Tr. P. 60). The Applicant further stated that he would "look to renounce" his citizenship but he needs time to sell his assets. (Tr. P. 62).

The Applicant states that from time to time he has provided some financial support to extended family members in Yugoslavia.

The Applicant served in the Yugoslavian Air Force from September 1, 1979 until August 1, 1980, as it was mandatory for all Yugoslavian citizens.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant has a mother, brother and sister who are citizens of Yugoslavia and reside there. He visits them in Yugoslavian once a year. He telephones his mother every two weeks. He has contact with his brother about once a month, and with his sister even less. (Tr. p. 63).

The Applicant's brother's wife is from Bosnia. The economy is better in Bosnia, and they may move to Bosnia. Applicant's brother may obtain Bosnian citizenship in the near future.

The Applicant maintained contact with three professors of Mechanical Engineering at the University of Belgrade up until about 1997. After that he severed almost all connections in Yugoslavia, except for his family. (Tr. P. 37).

The Applicant had a romantic interest with a woman who was a Yugoslavian citizen residing in Yugoslavia. He has sent her money. He met this woman before he was employed with the defense contractor. At one time he had planned to

marry this woman, but the relationship did not last. He no longer has any contact with her or with any one else outside of the United States.

The Applicant also had a romantic interest with a woman he met on the Internet, who is a citizen of South Africa currently employed in a military compound in South Africa. He met this woman before he was employed with the defense contractor. He no longer has any contact with her or with anyone else outside of the United States.

Mitigation.

A professional colleague that has known the Applicant for the past three years testified that the Applicant is hard working and completely trustworthy. (Tr. p. 67).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;
3. Military service or a willingness to bear arms for a foreign country;
4. Residence in a foreign country to meet citizenship requirements.

Conditions that could mitigate security concerns:

2. Indicators of possible foreign preference(e.g., foreign military service) occurred before obtaining United States citizenship.

Foreign Influence

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:

1. An immediate family member, or 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:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security

clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant is a dual citizen of Yugoslavia and the United States. Since becoming a citizen of the United States, he has lived and worked in the United States, but has maintained his dual citizenship status. He has exercised dual citizenship by obtaining and using a Yugoslavian passport after having become an American citizen. Although he has recently surrendered his Yugoslavian passport, it can be renewed as long as he is a Yugoslavian citizen. Furthermore, the Applicant has made it clear that, as to his Yugoslavian citizenship, he does not want to renounce it before he is able to protect his assets in Yugoslavia. He has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has foreign contacts, as well as emotional and family ties, in Yugoslavia. His family members, in this case his mother, brother and sister, are Yugoslavian citizens of long standing. There remains the possibility of pressure being placed on them, and through them, on the Applicant. It is Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C or Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C or B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant

1.b.: Against the Applicant

1.c.: Against the Applicant

1.d.: Against the Applicant

1.e.: Against the Applicant

1.f.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b.: Against the Applicant

2.c.: Against the Applicant

2.d.: Against the Applicant

2.e.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge