

DATE: April 15, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18019

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was born in Greece and is a dual citizen of the US and Greece. The Applicant's two elderly sisters are citizens of and living in Greece. His sisters are not agents of a foreign power or in a position to be exploited by a foreign power. Clearance is granted.

STATEMENT OF THE CASE

On October 5, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On November 2, 2001, the Applicant answered the SOR and elected to have his case decided on the written record, in lieu of a hearing.

On January 14, 2002, the Applicant received a complete copy of the "File of Relevant Material" (FORM) dated December 19, 2001, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant responded to the FORM on February 8, 2002. I was assigned the case on February 19, 2002, on which date the record in this case closed. The Department Counsel presented six exhibits (Items).

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits some of the allegations and denies the remainder.

The Applicant is 67 years old, has worked for a defense contractor since June 1988, and is seeking a security clearance. The Applicant was born in Greece. In ay 1977, the Applicant moved to the US and in July 1981, he became a naturalized US citizen. The Applicant has a US passport and does not have a Greek passport. Since 1981, all of his travel has been on his US passport. The Applicant believes he holds dual US and Greek citizenship. He married an

American citizen and lives in the US.

The Applicant has two sisters--aged 65 and 68--who are Greek citizens, residing in Greece. His sisters do not work for the Greek government, have never worked for the Greek government, served in the Greek military, nor are they agents of a foreign power. Between 1993 and 2000, the Applicant traveled yearly to Greece to visit his family, staying three or four days per visit. His last visited to Greece was in 2000.

In 1956, the Applicant graduated from a Greek maritime academy. From 1957 through 1960, he served in the Greek navy. Thereafter, he served 18 years with the Greek merchant marine, working for Greek commercial companies. He receives approximately \$100.00 per week pension (Item 6, p 2) for his prior service, which is deposited into one of his sister's bank account in Greece. The pension is for his merchant marine service and is not for service with the Greek government. (Item 4) The Applicant's pension represents less than two per cent of his current annual income. (Item 4) When his parents died, he and his two sisters inherited a \$65,000.00 house in Greece. His share of the house is less than three per cent of his net assets. (Item 4) He does not vote in Greece and has never held political officer there. He has not maintained his foreign citizenship to protect foreign property or financial interests. He has not exercised any attribute of his Greek citizenship since emigrating to the US. (Item 4)

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Preference (Guideline C) The Concern: 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. E2.A3.1.1.

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

1. The exercise of dual citizenship. E2.A3.1.2.1.

Conditions that could mitigate security concerns include:

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.

Foreign Influence (Guideline B) 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 not citizens of the United States or 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. E2.A2.1.1.

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. E2.A2.1.2.1.

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. E2.A2.1.3.1.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the US. Security concerns over the Applicant's possible foreign preference arise from his dual US Greek citizenship. The Applicant believes Greece may consider him a Greek citizen because he was born there. Although foreign law may impose dual citizenship on the Applicant, the Applicant has no control over this. But greater significance, the Applicant has not exercised his Greek citizenship since becoming a US citizen. Mitigating condition (MC) 1-(2) applies.

The Applicant receives approximately \$100.00 per week from a merchant marine pension, which is not a benefit provided by a foreign government. The pension is similar to a retirement from a company which is a reimbursement for his prior employment. The pension is deposited into his sister's bank account in Greece. Accepting a merchant marine pension is not the same as accepting retirement from a foreign country. Therefore, disqualifying condition (DC) 4-(3) does not apply.

The Applicant, together with his two sisters, inherited their parent's home worth \$65,000.00. His portion of the home represents less than 3% of his net assets. Receiving an inheritance--even if it is located in a foreign country--does not show the individual has acted in a way to show a preference for the foreign country. The Applicant does not maintain his foreign citizenship to protect this foreign property or any foreign financial interest. Owning foreign property could raise a concern under Guideline B, Foreign Preference, DC 8, (4) but mere inheritance does not show a concern under Guideline C, Foreign Preference. Had his partial ownership of the house been alleged under Guideline B, mitigating condition (MC) 5-(5) would apply because his interest is minimal, being less than 3% of the value of his net assets.

I find for the Applicant as to SOR subparagraphs 1.a., 1.b., and 1.c.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family and other persons to

whom he is bound by affection are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's sisters are citizens of and residing in Greece. Thus, disqualifying condition, E2.A2.1.2.1. (6) applies.

The burden is on the Applicant to demonstrate that these foreign nationals are not in a position to be exploited by a foreign power. The Applicant's two sisters--aged 65 and 68--are Greek citizens, residing in Greece. His sisters do not work for the Greek government, have never worked for the Greek government, have never served in the Greek military, nor are they agents of a foreign power. His ties to his sister present an acceptable security risk. The security concerns engendered by the foreign citizenship of his sisters are mitigated and MC 1-(7) applies. His sisters are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States. I find for the Applicant as to SOR subparagraph 2.a.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C (Foreign Preference): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a.: For the 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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1
3. DC 4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country. E2.A3.1.2.4.
4. DC8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence. E2.A2.1.2.8.

5. MC 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.

6. DC 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. E2.A2.1.2.1.

7. MC 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. E2.A2.1.3.1.