

DATE: May 12, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-23717

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jonathan A. Beyer, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant's mother is a citizen of Malta living in the U.S. The Applicant lived in Malta for 15 years and has relatives who still live there. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from the citizenship and location of her relatives. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 15, 2002, 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 <sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 10, 2002, the Applicant requested a hearing. The case was assigned to me on January 8, 2003. A Notice of Hearing was issued on January 23, 2003, scheduling the hearing, which was held on February 18, 2003.

The Government's case consisted of two exhibits (Gov Ex). The Applicant relied on her own testimony, that of her father, and five documents. (App Ex). The transcript (Tr.) of the hearing was received on February 28, 2003.

The SOR alleges foreign influence (Guideline B). She admits having relatives in friends who live in Malta and denies she would not defend the United States in the event of a conflict with Malta.

### **FINDINGS OF FACT**

The Applicant is 28 years old, has worked for a defense contractor since December 2000, and is seeking a security clearance. She is an intelligent, loyal, honest, hard-working individual with strong moral values. (App Exs C, E) She is a diligent worker who exhibits the highest ethical standards. (Gov Ex D)

The Applicant's father is a U.S. citizen who worked as an industrial engineer for an international oil company and

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traveled frequently. The Applicant's mother is a citizen of Malta, who has lived in the U.S. as a registered alien since July 1994. Her mother is not an agent of a foreign government or in a position to be exploited by a foreign power. The Applicant has been a U.S. citizen since her birth in 1974 and has never been a dual citizen. From age 4 through 19 the Applicant lived in Malta with her mother's family. From age five to 16 she attended private school and from age 16 to 18 she attended public school. In 1994, the Applicant came to the U.S. to live permanently and to attend college. Before leaving Malta, she worked summers in an ice cream parlor and at a pizza restaurant. After receiving her bachelor's and master's degrees, she married an American, and secured her current job with a defense contractor.

The Applicant's grandparents are citizens and residences of Malta. She receives birthday cards from them as well as infrequent letters, and telephone calls on special occasions. Her contact with them is approximately twelve times a year. Her grandfather is a retired public works architect. Her grandmother was a home maker who did not work outside of the home. She has limited contact with her great aunts, who do call her on her birthday. One great-aunt is a retired travel agent; the other is a Catholic nun. Her uncle was also an architect. She has no contact with her cousins: one is a student and the other a newspaper photographer. She has other relatives living in Malta to whom she is not close.

The Applicant's best friend, a citizen and resident of Malta, works for a beverage company. While in school, her friend worked as a clerk at the water department. She receives or sends e-mail to this person once a week

The Applicant has never accepted or sought any special benefits or privileges from a foreign country nor is she entitled to any. She has never voted in a foreign election, served in a foreign military, or worked for a foreign government. She does not own any foreign property nor does she maintain a foreign bank account. When her relatives in Malta pass away, she might or might not inherit property or money. The Applicant states her total and undivided allegiance is to the U.S. (Tr. 25) She has always been a U.S. citizen and is proud of it. Her home, car, and 401(K) plan are in the U.S.

In a sworn statement (Gov Ex 2) give In September 2001, the Applicant stated she would defend the U.S. against any aggressor with the exception of Malta in which she would not want to be involved on either country's side as she would not want to harm either country. At the hearing the Applicant had reflected on her previous statement and said, if the U.S. went to war against Malta, the Applicant would support the U.S. unconditionally. (Tr. 27) Should such an event occur, she would be concerned about her relatives in Malta and their safety, but the Applicant would stand by the U.S. in all crises, including policies that might adversely affect Malta, and would never veer from this conviction. (Tr. 28)

### 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, and the facts must 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 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 (E2.A2.1.2.):

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.

3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* 484 U.S. at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant then has the burden of establishing her 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 her security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under Guideline B, 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 not citizens of the United States, reside in a foreign country, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. The Government established the Applicant's mother is a citizen of Malta and she has other relatives and friends who are citizens and residents of Malta. Disqualifying Condition (DC) 1<sup>(3)</sup> applies.

Although the Government established a *prima facie* case against her, she has nevertheless, successfully mitigated those security concerns. Neither her mother nor her other relatives are agents of a foreign power and Applicant is not in a position to be exploited by them such that Applicant would be forced to choose between her loyalty to her family and the U.S. Mitigating condition (MC) 1<sup>(4)</sup> applies. The Applicant has always been a U.S. citizen and has never been a citizen of Malta. Additionally, her contact with her grandparents, great aunts, uncle and cousin are infrequent. MC 3<sup>(5)</sup> applies to these individuals. After observing and hearing the Applicant, I am convinced that her family members do not represent a credible security risk to this nation. I find for the Applicant as to SOR subparagraph 1.a.

The Applicant may, at some future date, inherit property from relatives who currently are residents of Malta. The possibility of inheritance is purely speculative and, in this instance, to have no security relevance. An Applicant does not have a financial stake in a country merely because they may inherit property some time in the future. *See* ISCR Case No. 97-0403 at page 3 (Appeal Board decision May 13, 1998)

The Applicant has expressed concern for her family members should they ever be in a war. This natural concern for the safety of family in times of danger does not rise to the level of a security concern. The Applicant has clearly expressed should the U.S. ever go to war with Malta, she would support the U.S. unconditionally. (Tr. 27) The Applicant has credibly testified she would stand by the U.S. in all crises, including policies that might have an adverse effect on Malta, and would never veer from this conviction. (Tr. 28) I find for the Applicant as to SOR subparagraph 1.b.

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 B (Foreign Influence): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: 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.

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**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. Malta, a former British colony has a population of 370,000 inhabitants and an armed force of 1,700. (App Ex A)
3. 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.
4. 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.
5. MC 3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.