

KEYWORD: Foreign Influence; Foreign Preference; Drugs

DIGEST: Applicant has mitigated foreign preference concerns. He was drafted to serve in the Argentine Coast Guard and his service occurred before he became a U.S. citizen. Moreover, Applicant has renounced his Argentine citizenship. Foreign influence concerns are also mitigated. Although Applicants' parents, brother, and friends are citizens and residents of Argentina, they are not agents of a foreign power or in a position to be exploited by a foreign power. Applicant's limited marijuana use is also mitigated. It ended five years ago and he has demonstrated an intent not to use abuse any drugs in the future. Clearance is granted.

CASENO: 02-01126.h1

DATE: 09/16/2004

DATE: September 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01126

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Department Counsel

FOR APPLICANT

W. Steven Smitson, Esq.

SYNOPSIS

Applicant has mitigated foreign preference concerns. He was drafted to serve in the Argentine Coast Guard and his service occurred before he became a U.S. citizen. Moreover, Applicant has renounced his Argentine citizenship. Foreign influence concerns are also mitigated. Although Applicants' parents, brother, and friends are citizens and residents of Argentina, they are not agents of a foreign power or in a position to be exploited by a foreign power. Applicant's limited marijuana use is also mitigated. It ended five years ago and he has demonstrated an intent not to use or abuse any drugs in the future. Clearance is granted.

STATEMENT OF THE CASE

On September 9, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline H (Drug Involvement). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On October 8, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 30, 2004. A notice of hearing was issued on February 20, 2004 and the hearing was held on March 11, 2004. During the hearing, five Government exhibits (Govt Ex), six Applicant exhibits (Ap Ex), and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on March 22, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 40-year-old network administrator employed by a government contractor. He was born in Argentina. Applicant was drafted and served in the Argentine Coast Guard from April 1982 until April 1983 (SOR ¶ 2.b).

Applicant immigrated to the United States in 1991. Since 1992, he has returned to Argentina for periods of 10 days to two months on six occasions (SOR ¶ 2.d). Between January 1995 and May 1999, he used marijuana approximately 20 times, usually with friends at parties (SOR ¶ 3.b). He no longer associates with any of those friends.

Applicant became a U.S. citizen on March 14, 2001. He married that same year. His wife is studying for a doctorate degree and is employed as a paralegal for her father's law firm. Applicant and his wife have a 2-year-old son and are expecting another child. They spend a lot of time on weekends with her family at her parents' summer home.

On May 16, 2001, a U.S. passport was issued to Applicant. Later that same month, he returned to Argentina for a visit using his Argentine passport (SOR ¶ 2.c). That passport was issued on December 26, 1996 and expired on December 26, 2001.

Applicant's parents are citizens and residents of Argentina. His parents are not agents of any government. They own and operate a small store. Applicant maintains biweekly contact with them by both e-mail and telephone. He visits them when he returns to Argentina and they have visited him in the United States (SOR ¶ 1.a).

Applicant's brother is a citizen and resident of Argentina. His brother is not an agent of any government. He owns and operates a small insurance agency. Applicant maintains semiannual telephonic contact with his brother and visits him when he returns to Argentina (SOR ¶ 1.b).

Applicant has three friends who are citizens and residents of Argentina and whom he visits on his trips there. None of them are agents of any government. One of them is a systems administrator for his father's accounting firm. Applicant maintains weekly contact with him by e-mail (SOR ¶ 2.c). He maintains biweekly contact with the other friends by e-mail (SOR ¶ 2.d and e).

On June 18, 2001, Applicant submitted an application for a security clearance. On March 10, 2004, he renounced his Argentine citizenship.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration 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 decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline B: Foreign Influence

A security risk may exist when an individual's immediate family, including co-habitants, 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. 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 (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A2.1.3.1 (Mitigating Condition 1). Mitigating Condition 1 applies with a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, 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.

Guideline C: Foreign Preference

The concern is that 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. The Directive E2.A3.1.1. Conditions that could raise a security concern and may be disqualifying include E2.A2.1.2, possession and/or use of a foreign passport (Disqualifying Condition 2). Pursuant to an August 16, 2000 memorandum by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline" (ASDC3I Memo), "application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." Conditions that could raise a security concern and may be disqualifying also include E2.A2.1.3, military service or willingness to bear arms for a foreign country (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A3.1.3.1, dual citizenship is based solely on parents' citizenship or birth in a foreign country (Mitigating Condition 1). They also include E2.A3.1.3.2 (Mitigating Condition 2) and E2.A3.1.3.4 (Mitigating Condition 4). Mitigating Condition 2 applies when indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United states citizenship. Mitigating Condition 4 applies when the individual has expressed a willingness to renounce dual citizenship.

Guideline H: Drug Involvement

The concern under Guideline H is that improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying under Guideline H include E2.A8.1.2.1, any drug abuse (Disqualifying Condition 1). Conditions that could mitigate security concerns include E2.A8.1.3.1, the drug involvement was not recent (Mitigating Condition 1). They also include E2.A8.1.3.3, a demonstrated intent not to abuse any drugs in the future (Mitigating Condition 3).

CONCLUSIONS

Applicant's parents, brother, and friends are citizens and residents of Argentina. This raises Disqualifying Condition 1. However, none of them are agents of Argentina or any foreign power. Furthermore, none of them are in a position to be exploited by a foreign power. Argentina has a democratic form of government and maintains close military ties to the United States. No foreign power or terrorist group hostile to the United States is operating in Argentina so as to threaten Argentine citizens. Therefore, this security concern is mitigated in accordance with Mitigating Condition 1. I find in favor of Applicant with regard to SOR ¶ 1.

Applicant's use of an Argentine passport after obtaining U.S. citizenship raises Disqualifying Condition 2. His service in the Argentine Coast guard raises Disqualifying Condition 3.

Mitigating Condition 1 applies in this case because Applicant's dual citizenship is based on parents' citizenship and his birth in Argentina. His military service in Argentina is mitigated in accordance with Mitigating Condition 2 because it occurred before he became a U.S. citizen.

As Applicant explained, he mistakenly believed that as an Argentine citizen, he was required to use his Argentine passport in returning to Argentina. That was the sole occasion that he used his Argentine passport after becoming a U.S. citizen. The passport expired in December 2001 and Applicant never renewed it. Moreover, he has renounced his Argentine citizenship. This exceeds the requirement of Mitigating Condition 4, a mere willingness to renounce dual citizenship.

Applicant has mitigated foreign preference concerns and demonstrated a preference for life as a U.S. citizen. Therefore, I find in favor of Applicant with regard to SOR ¶ 2.

Applicant's admitted marijuana use raises Disqualifying Condition 1. However, his drug involvement was not recent, having ended five years ago. Moreover, Applicant no longer associates with the friends with whom he used marijuana. He has since married and has a family. Applicant's change in life style demonstrates his expressed intent not to abuse any drugs in the future. Therefore, his drug abuse is mitigated in accordance with Mitigating Condition 1 and Mitigating Condition 3. I find in favor of Applicant with regard to SOR ¶ 3.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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

Subparagraph 1.e: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Paragraph 3. Guideline H: FOR APPLICANT

Subparagraph 3.a: For Applicant

DECISION

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

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.