

DATE: April 28, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-03945

## **DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert J. Tuidor, Esq., Department Counsel

#### **FOR APPLICANT**

Attila Bogdan, Esq., Applicant's Counsel

### **SYNOPSIS**

Applicant emigrated at the age of 22 from Bosnia Herzegovina (B/H) to the United States during the civil war in B/H, obtained bachelor and master's degrees, and became an United States citizen along with her parents and sister. She now seeks a security clearance because she works for a defense contractor as an electrical engineer. She possessed a B/H passport prior to becoming a U.S. citizen, and retained it after becoming a citizen. Her only step-sister continues to remain in B/H where she has lived all her life, taking care of her ill husband and two children. Applicant renounced her B/H citizenship, surrendered her B/H passport, and obtained a U.S. passport which she uses exclusively for any foreign travel. Applicant demonstrates no foreign preferences or allegiances over those she owes to the United States. Clearance granted.

### **STATEMENT OF THE CASE**

On October 23, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personal security Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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 Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated November 21, 2002, Applicant responded to the SOR allegations. She requested a hearing. This case was originally assigned to Administrative Judge Wilford Ross on December 20, 2002. The case was reassigned to Administrative Judge Kathryn Braeman on December 20, 2002, due to regional rotations assignments. It was reassigned to me on February 11, 2003, due to caseload considerations.

Previously, a Notice of Hearing was issued on January 7, 2003 setting the hearing for January 29, 2003. Applicant then obtained counsel who motioned for a continuance. That motion was granted and the hearing rescheduled. A Notice of Hearing was issued on February 13, 2003, setting the hearing for March 13, 2003. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The

Government presented three exhibits<sup>(1)</sup> which were admitted into evidence. The Government also offered for administrative notice three documents<sup>(2)</sup>. Applicant appeared and testified, presented one witness, and offered ten exhibits<sup>(3)</sup>, all of which were admitted into evidence. I received the transcript (Tr.) of the hearing on March 25, 2003.

#### **FINDINGS OF FACT**

Applicant admitted the allegations in subparagraphs 1.a., and 2.a. of the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant was born in 1972 in Bosnia-Herzegovina (B/H), which was once part of the now former country of Yugoslavia. She, her father, mother, and one sister came to the United States in February, 1994, as refugees from the civil war then raging there. She came to the United States to escape the civil war in B/H when her father was wounded in the local marketplace along with hundreds of other people that day. They were evacuated to Germany for treatment. They were sponsored thereafter by an American organization and came to the United States. Applicant became a U.S. citizen in May, 2000, as did her mother and sister. Her father became a U.S. citizen in 2001. Applicant graduated from college in 1996 with a Bachelor's degree in Mechanical Engineering, and in 2000 graduated with a Master's Degree in Electrical Engineering, all while English was a second language to her. She studied English in high school and she was able to improve it while studying for her academic degrees. Applicant is currently employed with a defense contractor as an electrical engineer, and has been since November, 2000. Applicant is presently unmarried, but is engaged to be married. She has one older married step-sister who resides in B/H. (Tr. 17-19, 41; Government Exhibit 1 at 1, 2, 11; Government Exhibit 2 at 1, 8; Applicant Exhibit C)

Applicant is doing well at her place of employment. Her performance appraisals are very good and reflect her work commitment. Her employer supports Applicant's request for a security clearance. (Tr. 44-49; Applicant Exhibits F, G, and H at all pages)

Applicant sends her step-sister in B/H \$500 annually to help her out financially. Her step-sister's husband is retired and unemployed because he has serious health problems, though the husband does have a small pension from his former employer. Applicant speaks to her step-sister by telephone monthly, and has visited her during two trips Applicant took to B/H. Applicant has other relatives in B/H who are aunts and uncles, with whom she has little or no contact. (Tr. 27-29, 37; Government Exhibit 2 at 2, 3)

Applicant had a B/H passport which was issued on November 3, 1999 and would have expired on November 3, 2004. Applicant was not yet a U.S. citizen, and needed a passport to travel to B/H, so she obtained the B/H passport. She surrendered her B/H passport by mailing it to the B/H consulate on November 12, 2002, and declared in writing she was no longer a B/H citizen. She also has a U.S. passport which was issued on June 28, 2000 and expires on June 27, 2010. Applicant has not used the B/H passport since obtaining a U.S. passport, and only uses her U.S. Her latest two trips to B/H have been while using the U.S. passport. Applicant's parents traveled to B/H in 2001 to visit relatives. Her sister works for the United Nations on refugee relief and has been in B/H in that capacity in late 2000 and early 2001. Currently, she is in Kosovo assisting refugees. Applicant states she will travel in the future to B/H, but has no definite plans yet. Applicant has no business interests or property in B/H. She intended her B/H citizenship to be revoked when she became a U.S. citizen. (Tr. 21, 22, 38; Government Exhibit 2 at 3-8; Applicant Exhibit B at 1-8)

#### **POLICIES**

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

#### **GUIDELINE C: Foreign Preference:**

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. Directive ¶ E2.A3 .1.1.

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

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.

E2.A3.1.3. Conditions that could mitigate security concerns include:

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

Individual has expressed a willingness to renounce dual citizenship. Directive ¶ E2.A3.1.3.4.

#### **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 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. Directive ¶ E2.A2.1.1.

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

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. Directive ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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. Directive ¶ E2.A2.1.3.1.

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

### **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

The Government has clearly shown that Applicant has connections to her former homeland of B/H. Applicant grew up there and departed when she was 22 under wartime conditions. Under the facts, the only possible Guideline C Disqualifying Conditions (DC) which might be applicable are 1 (exercising dual citizenship) and 2 (possession and/or use of a foreign passport). They are the key concerns here and what vulnerabilities Applicant may have as a result of these familial relationships to disclose classified information to the B/H government or its allies.

But these DCs are offset by the Mitigating Conditions (MC) 1 and 4. Applicant was born in B/H and lived with her parents. She had no choice in that citizenship. That past life she left behind when evacuated, and it occurred before she became a U.S. citizen. Applicant has never exercised dual citizenship, and expressed the thought she had renounced it, more or less by operation of law, when she swore allegiance to the United States upon becoming a U.S. citizen in 2000. It is clear from her testimony and the documentary evidence she has not exercised and does not intend to claim or exercise dual citizenship.

Regarding Guideline B, the applicable DC is 1 (close relatives are citizens of a foreign country). Her step-sister is a person to whom she has close familial ties in B/H, so DC 1 applies. The money she sent shows her close ties and sense of obligation. She stated she has not sponsored anyone into the U.S.

The DC is then counter-balanced by MC 1 and 5. Applicant's step-sister is not an agent of B/H. Her step-sister is older than Applicant, married, and has children, and Applicant has not sought to sponsor her and her family into the U.S. Those facts demonstrates to me Applicant's ties are not of a magnitude to be used to coerce Applicant. MC 5 is applicable because Applicant does not have B/H financial interests which could affect her security responsibilities. The annual gift money sent to the step-sister is a minimal amount.

Applicant testified about the efforts she made to come to the U.S., and learn English. She then obtained to degrees in technical areas while learning and using her new language. Those accomplishments are significant. Now, she has a good job and is building a future for herself in the United States. Applicant clearly knows she has more to lose than gain if she betrays the trust placed in her, and that she truly recognizes the value of her citizenship here, and would do nothing to endanger her citizenship by betraying it. I find Applicant to be sincere and credible in her statements, and therefore, I believe her. After considering all of the evidence, and looking at the total person and facts surrounding this case, I can

only conclude that the MCs prevail and I give them greater weight.

**FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

**DECISION**

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

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Philip S. Howe

Administrative Judge

1. Government Exhibit 1: Applicant's security clearance application; Applicant's written statement; a photocopy of Applicant's Bosnia Herzegovina passport.
2. Consular Information Sheet on Bosnia and Herzegovina; a travel warning on Bosnia-Herzegovina; the August 16, 2000 memorandum authored by Arthur L. Money clarifying application of Guideline C (Foreign Preference).
3. Applicant Exhibit A: U.S. passport; Applicant Exhibit B: Surrender documents of B/H passport; Applicant Exhibit C: Character statement; Applicant Exhibit D: Character statement; Applicant Exhibit E: Attorney statement; Applicant Exhibit F: Performance appraisal; Applicant Exhibit G: Performance appraisal; Applicant Exhibit H: Performance appraisal; Applicant Exhibit I: Employer commendation letter; Applicant Exhibit J: Character statement.