

DATE: April 22, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05785

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's dual citizenship is based on his birth in Bulgaria. His conduct since moving to the United States approximately 12 years ago with his immediate family members has indicated a clear preference for the United States over Bulgaria. Clearance is granted.

STATEMENT OF THE CASE

On December 19, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to applicant which detailed 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on February 10, 2003. The case was assigned to the undersigned on February 26, 2003, and a Notice of Hearing was issued on March 27, 2003. The hearing was held on April 2, 2003.⁽¹⁾ The transcript was received on April 16, 2003.

FINDINGS OF FACT

Applicant is a 27 year old single man. He is employed as an engineer by a defense contractor.

In 1975, applicant was born in Bulgaria. In early 1990, his father moved to the United States. Later that year, applicant, his brother, and his mother joined the father in the United States. Shortly after their arrival, it became apparent that the father's income was insufficient to support applicant, his brother and his mother, so the three of them moved back to Bulgaria. They returned to the United States in April 1991, and have lived in the United States since then. Since moving

to the United States, it has been applicant's intention, as well as the intention of his immediate family members, to remain here permanently (TR at 45).

After he graduated from high school in 1994, applicant attended a university in the United States. He graduated with an engineering degree in 2000. He has been with his current employer since July 2000.

Applicant's father, mother and brother became naturalized United States citizens in 1996. Because of a mixup and mail problems, applicant did not become a naturalized United States citizen until 1999. Applicant received a United States passport in October 1999.

Applicant had a Bulgarian passport, which was set to expire in November 2006 (Exhibit H). He surrendered the passport to the Bulgarian Embassy in 2003 when he realized his possession of it was incompatible with holding a security clearance (TR at 33-34). Contrary to SOR Allegation 1c, applicant did not use the Bulgarian passport subsequent to his receipt of his United States passport in 1999.

By virtue of his birth in Bulgaria, applicant is still considered a citizen of Bulgaria. At the present time, applicant does not intend to renounce his Bulgarian citizenship. His primary reason for not wanting to renounce it is his belief that this citizenship might be of some value to his employer, which does business overseas (TR at 36-37). Applicant testified credibly, however, that if Bulgaria ever required him to make any statements, or take any action (e.g., serve in Bulgarian armed forces), that was inconsistent with his oath of allegiance to the United States, he would renounce his Bulgarian citizenship "without a second thought" (TR at 16, 35, 45).

Applicant's father, mother, and brother are still citizens of Bulgaria. Applicant has other, more distant family members who are Bulgarian citizens living in Bulgaria. There is no evidence that these relatives could or would exert pressure upon applicant to take action contrary to the interests of the United States.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and Conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

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.

Conditions that could raise a security concern:

1. E2.A2.1.2.1: An immediate family member is a citizen or resident of a foreign country.

Conditions that could mitigate security concerns:

1. E2.A2.1.3.1: A determination that the immediate family members 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.

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.

Conditions that could raise a security concern:

1. E2.A3.1.2.1: The exercise of dual citizenship.
2. E2.A3.1.2.2: Possession and/or use of a foreign passport.

Conditions that could mitigate security concerns:

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

CONCLUSIONS

Based on the evidence presented, I conclude that applicant's ties to Bulgaria (1) do not leave him potentially vulnerable to coercion, exploitation or pressure that could result in the compromise of classified information, and (2) do not indicate a preference for Bulgaria over the United States.

With respect to Guideline B, the evidence does not establish that applicant is vulnerable to foreign influence, notwithstanding the facts that (1) his parents and one sibling currently are citizens of both the United States and Bulgaria, and (2) he has distant relatives who are citizens and residents of Bulgaria. There is simply no credible evidence that these family members are in a position to be exploited by Bulgaria in a way that could force applicant to choose between loyalty to these family members and loyalty to the United States. Based on these facts, Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that applicant has dual citizenship because of his birth in Bulgaria. Since moving to the United States approximately 12 years ago, his conduct has indicated a clear preference for the United States over Bulgaria. He and his immediate family members have made great sacrifices to become citizens and residents of the United States, and there is no reason to believe that their stated desire to make the United States their permanent home is not sincere and worthy of belief.

Applicant has satisfied the security concern raised by his possession of the Bulgarian passport by surrendering it to the Bulgarian embassy. His explanation for not wanting to renounce his Bulgarian citizenship at the present time is reasonable, and when viewed together with his credible testimony that he would renounce his Bulgarian citizenship if he were ever asked to make a statement or to take any action incompatible with his oath of allegiance to the United States, leads me to conclude that applicant's dual citizenship does not render him a security risk. Based on these facts, Guideline C is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE C: 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 applicant.

Joseph Testan

Administrative Judge

1. Applicant requested an expedited hearing and waived the normal notice requirement.