

KEYWORD: Foreign Influence

DIGEST: Applicant who is a naturalized US citizen from Germany who retains a German bank account and a vested German retirement expectancy and previously served as an assistant defense attache for a German Embassy, mitigates security concerns by showing little likelihood of German pressure or influence without reporting the contacts to US authorities and overall lack of risk of pressure or influence on his immediate family members residing in Germany, a NATO country. Clearance is granted.

CASENO: 02-05855.h1

DATE: 08/31/2004

DATE: August 31, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05855

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Barry Beronet, Esq.

SYNOPSIS

Applicant is a naturalized US citizen who immigrated to the US from Germany in 1992 following his retirement from the German Air Force (AF). He and his new wife (a naturalized citizen from the Philippines who he met while training in the US) are patriotic U.S. citizens. Applicant continues to maintain contact with his mother and brother who are citizens and residents of Germany, but none of Applicant's immediate family members are agents of the German government or in a position to be exploited or pressured. Neither Applicant's current banking relationship nor his vested retirement benefits in Germany are not likely to prompt any pressure or influence of Applicant. Any potential risks of foreign influence are mitigated. Clearance is granted.

STATEMENT OF CASE

On October 15, 2003, 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, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on November 14, 2003, and requested a hearing. The case was assigned to me on April 21, 2004, and was scheduled for hearing on June 25, 2004. A hearing was convened as scheduled for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on two witnesses (including himself) and one exhibit. The transcript (R.T.) of the proceedings was received on July 9, 2004.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged to have family members who are citizens and residents of Germany, financial

interests in Germany (monies owed a German bank resulting from an overdraft on an account and entitled retirement benefits from the German government) and past service as an assistant defense attache to the German Embassy in the U.S. For her answer to the SOR, Applicant admitted each of the allegations without explanation.

FINDINGS OF FACT

Applicant is a 44-year old structural assembly worker for a defense contractor who seeks to obtain a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant is a German citizen by birth who was raised in Germany. In 1972 he enlisted in the German military and received his higher education through the military. After completing his pilot training in 1977 and became a pilot in the German Air Force. While still in the German military (1990 to 1991), he received war college training in the U.S. Applicant's marriage to his first wife (a German citizen) dissolved in 1989 following a lengthy separation; she bore him a son and a daughter.

While training in the U.S. at a war college, he met and married his current spouse (a licensed nurse) in 1990, who he was introduced to by his cousin (a physician whom she was working for at the time) in 1989. She is a U.S. citizen by birth who was born in the Philippines. Her father was a U.S. prisoner of war during World War II and is a survivor of the Bataan death march; while her mother smuggled food to the prisoners of war and later became a U.S. citizen (R.T., at 70-71). While Applicant and his current wife have no children born to them, Applicant adopted his wife's children from her former marriage: a daughter who attracted muscular sclerosis in 1988 and passed away in 1999 after a number of years of being bed ridden and a son who resides in a neighboring state. Prior to her passing, Applicant spent considerable assisting his spouse in caring for her.

In 1991, while undergoing pilot training in the U.S., Applicant accepted a post as an assistant defense attache attached to the German Embassy in Washington, D.C. He served in this post until his retirement from the German AF in 1992, where he was fully accorded all honors and privileges attendant thereto by the U.S. DoD (*see ex. A*). While holding this post, he held NATO, U.S. and German clearances (R.T., at 21-22, 63-66). Following his retirement, he applied for and received a green card that permitted him to stay and work in the U.S. He became a naturalized U.S. citizen in September 2000 (*see ex. 3*). When he became a U.S. citizen, he renounced his German citizenship.

After retiring from the German AF in 1992, Applicant moved to his current state of residence and enrolled in graduate education at a local university. For a brief period (1993-1995) he left the state to work for a defense contractor located in another state. Upon his returning to his current state of residence in 1996, he worked for a couple of contractors before joining his current defense contractor in 2000.

In his work with U.S. defense contractors since his retirement from the German AF, Applicant has concentrated primarily on international programs where he able to use his foreign language skills. While he has never received any suspicious requests for any classified information, he assures he would immediately report any foreign contacts or threats to appropriate company and U.S. officials.

Applicant has no property outside of the U.S., except for a German bank account he established in 1994 to receive disburse funds from a loan he obtained to fund alimony and child support payments (for his daughter) to his ex-wife (*see ex. 3; R.T., at 29-30, 38-39*). Between 1988 and 2000 Applicant's alimony and child support payments for his daughter was \$450.00 a month. Child support payments discontinued following his daughter's death from a terminal illness in 1999 (*R.T., at 29*). While his alimony and child support obligations have expired, he has continued to make monthly payments of \$150.00 on a \$7,000.00 overdraft charge accumulation with the same German bank.

Besides his German bank account maintained by Applicant to receive his overdraft payments, Applicant's only other financial interest in Germany is his earned social security entitlement. This benefit expectancy is fully vested and entitles him to monthly retirement benefits at age 65 (*see ex. 3; R.T., at 31*). As a part of his divorce settlement with his first spouse, he agreed to a \$350.00 monthly social security benefit to go to her, in the event she is still alive when he expires (*R.T., at 31-32*). Should Applicant reach the age of 65, he stands to receive \$350.00 a month from Germany in the form of social security benefits. Of his estimated \$180,000.00 in net worth, his retirement expectancy has a discounted present value of about \$63,000.00 (*R.T., at 53-54*). This could change dramatically, though, over the course of the ensuing five years before Applicant reaches the eligibility age. By this time his discounted retirement benefits might bear a considerably lower percentage of his net worth due to significant aggregations of capital relative to this discounted retirement value.

Germany has no reciprocity enforcement machinery with the U.S. that would enable Applicant to bypass direct communications with German government personnel should a payment problem arise with respect to either his benefit expectancy or his ex-wife's. However, should Applicant ever encounter any problems in collecting his retirement expectancy he would try to enlist the assistance of the responsible U.S. agency to secure his retirement benefits from its German counterpart (*R.T., 83-84*). He does not anticipate ever having to enlist any special influence to free any of his retirement expectancy. Any potential for Applicant's needing special government influence to free his retirement expectancy remains much too speculative to warrant any drawn inferences of pressure and influence possibilities in the future.

Applicant's family and business relationships

Applicant has immediate family members who are citizens of Germany and reside there: his mother, brother and son from his first wife. His brother (who served in the German Army during World War II) is a vice president for a local German coffee company; his mother is semi-retired. His mother and brother reside together and see Applicant when he travels to Germany on business trips: He last visited them in February 2004 (R.T., at 46-47). His brother, in turn, visited Applicant in 2000. Neither his mother nor brother has any connections with the German government. Applicant manages to stay in touch with his brother two to three times a year, while contacting his mother monthly, normally through letter exchanges (R.T., at 47). He provides no financial support to either his mother or his brother. Applicant knows of nothing in either their backgrounds, or his ex-wife's, that would make them vulnerable to coercion, pressure or influence.

Applicant's father, who is deceased, served in the German military as an enlistee. His ex-wife is also a German citizen who resides in that country. He maintains regular contact with his immediate family members, but not his ex-wife or son. To be sure, he does not know of the whereabouts of either his ex-wife or his son (R.T., at 26) and is aware of nothing in his relationship with either that could compromise his security clearance. He has not seen his son in over 18 years. Applicant also had a daughter by his first wife, who had been diagnosed with a terminal illness before her death in 1999. Applicant carried his daughter on his own insurance and relied on his ex-wife to care for her before her passing.

Applicant has logged extensive foreign travel time for his current and past employers in his work in selling products to foreign governments (*see ex. 3*; R.T., at 27, 57-58). He only travels to countries in which his employer has an export license. Prior to traveling in behalf of his employer he regularly reports the names of business contacts he expects to see in his visits (R.T., at 27-28). When he returns he reports the persons he has visited on his trips. Were he to be approached by any foreign person about providing classified information, he would immediately report it to the appropriate agencies (R.T., at 34).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: 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 are 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.

Disqualifying Conditions:

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.

DC 6: Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

DC 8: A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

Mitigating Conditions:

MC 1: A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States.

MC 4: The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required.

MC 6: Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Security issues of concern to the Government in this proceeding focus on the status of Applicant's mother and brother who are citizens and residents of Germany. Security concerns also extend to Applicant's bank account in Germany, to which he makes monthly payments on a debt balance resulting from accumulated overdraft protection, his vested

German social security benefits, which he becomes eligible to receive when he reaches the age of 65, and his previous assignment as an assistant defense attache for the German Embassy in Washington, D.C. before his 1992 retirement from the German AF.

Because members of Applicant's immediate family are German citizens who reside there, they present potential security risks covered by Disqualifying Condition (DC) 1 of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these relatives in Germany pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control. That Applicant is in debt to a German bank on an overdraft protection account for almost \$7,000.00, retains vested social security benefits in Germany and served as an assistant defense attache to the German Embassy in Washington, D.C. before his retirement from the German AF in 1992 is security significant at the outset by making Applicant more vulnerable to coercion or pressure by the German government. On these facts, DC 6 (conduct which makes the individual vulnerable to coercion, exploitation, or pressure by a foreign government) may be invoked as well. DC 8 (a substantial financial interest in the country) of the Guidelines has some applicability as well based on the assigned percentage of Applicant's discounted vested retirement expectancy *vis-a-vis* his overall net worth.

Department Counsel urges the application of DC 3 (relatives, cohabitants, or associates who are connected with any foreign government) of the Guidelines as well. DC 3 speaks to the present, however, and neither Applicant nor any of his immediate family members are documented to have any current connection with the German or any other foreign government. Applicant's prior connections with the German government long since terminated and have never been renewed in any tangible ways that can be documented. DC 3 may not be invoked under the circumstances.

From what is known from the accounts of Applicant and her husband, neither his mother nor his brother holding German citizenship have any affiliations or connections with the German government. Nor does either immediate family member receive any financial assistance from Applicant or have any history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same. Likewise, neither Applicant's debt relationship with a German bank on an accumulated overdraft protection account, his vested social security benefits, nor his past assignment as a assistant defense attache to the German Embassy (over 13 years ago) seem likely to give rise to a situation where he might need to seek special intervention by German authorities to secure proper payment credits on his German account or ensure receipt of his retirement benefits. Moreover, he has pledged to report to the proper U.S. and company authorities any actions by a foreign individual that might make him vulnerable to foreign coercion or influence.

Department Counsel's reliance on ISCR Case No. 01-02270 (August 2003) seems misplaced. Applicant is neither a dual citizen (having renounced his German citizenship) nor a person manifesting a foreign preference through acceptance of foreign education or retirement benefits. And it has been some 13 years since he held a security clearance in the German AF. This is not to suggest his prior post as an assistant defense attache before retiring from the German AF is not of security significance: It is. Important events have occurred since he held this post, however, that must be accorded significant weight as well: most of all his becoming a naturalized U.S. citizen and his renouncing of his German citizenship.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Germany through the Adjudicators Desk Reference. Germany, it should be noted, is a longstanding ally of the U.S. and a charter member of NATO.

Here, any possibility of Applicant's being pressured or succumbing to pressure from German authorities in return for pressed assistance from Applicant in his current banking and future retirement dealing is still very speculative. To date, neither Applicant's mother nor his brother has made any visible attempt to enlist Applicant's assistance in any matter that might require his approaching the German government about intervention. All of Applicant's financial interests in Germany are either being handled through normal business channels or promise to be addressed in the regular course of business. In the 12 years since he became a U.S. citizen, he has never attempted to enlist German government influence. To the contrary, he has consistently reported prospective foreign contacts in his planned business trips and actual contacts in his returns. Nothing was presented in the record to increase expectations of his turning to German government assistance in the future, or failing to report any attempted pressure or influence from German authorities in the future. Any security risks associated with Applicant's financial interests and prior positions in Germany are quite low.

Piecemeal analysis has, of course, been consistently rejected by the Appeal Board when assessing the security risks posed by an applicant's family members residing in a foreign country. *See* ISCR Case No. 01-22693 (September 22, 2003). Because of the rich potential for considerable increase in Applicant's total net worth by the time he reaches retirement eligibility age, it is difficult at this time to assess the value of his discounted retirement benefits as a percentage of his net worth. At the moment, though, his discounted retirement benefits constitute too large a percentage of his net worth to enable him to invoke the mitigation benefits of MC 1 (foreign financial interests are minimal). Applicant may invoke MC 4 (history of prompt reporting) of the Guidelines, however, given his consistent practice of reporting foreign contacts. He may fully invoke the mitigation benefits of MC 1 (a determination that the immediate family members, co-habitant or associate 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 persons involved and the United States).

Successful mitigation does not require application of all of the potentially available mitigation conditions, however, to successfully surmount Government security concerns. An applicant's security eligibility must also take account, as appropriate, the general E2.2 factors set forth in the Directive as well as the entire realm of human experience to properly assess clearance eligibility. *See* ISCR Case No. 02-11454 (June 2004). Such a whole person evaluation of Applicant's security eligibility enables him to mitigate security concerns more difficult to achieve by technical application of the Guidelines to the facts of Applicant's case.

Overall, any potential security concerns attributable to Applicant's immediate family members, his present and prospective financial interests in Germany, and his past position as an assistant defense attache to the German Embassy in Washington, D.C., are mitigated sufficiently to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his relationships with family members in Germany, his economic ties to that country and his prior high level position with a German embassy before his retirement and change of citizenship. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, I make the following separate FORMAL FINDINGS with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR 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 Applicant's security clearance.

Roger C. Wesley
Administrative Judge