

DATE: October 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07343

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized United States citizen, has close relatives who are citizens and residents of Greece. She also owns an income generating apartment in Greece, and maintains a shared savings account with her father in a Greek bank. Applicant failed to present any evidence to rebut, extenuate, or mitigate the security concern caused by her close relatives being citizens and residents of a foreign country. Clearance is denied.

STATEMENT OF THE CASE

On January 23, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence). Applicant submitted a response to the SOR, dated February 3, 2003, and requested a clearance decision based on the written record without a hearing. In her response to the SOR, Applicant admitted all allegations contained in the SOR.

Department Counsel prepared a File of Relevant Material (FORM) on July 28, 2003, that was mailed to Applicant on July 29, 2003, and informed her she had 30 days from receipt of the documents to submit her objections or information she wished to be considered. Applicant acknowledged receipt of the file on August 11, 2003, and did not file any additional information or interpose any objection to the material submitted by Department Counsel within the time allowed. The case was assigned to me September 25, 2003.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 43-years-old, married, and the mother of two children. She attended college in Greece from September 1978 to February 1984, earning a bachelor of science degree in engineering. She worked for a bank in Greece as a real estate appraiser from September 1983 to May 1986. Applicant married her husband in Greece on May 18, 1986, and shortly thereafter immigrated to the United States. Her husband is 56-years-of-age,

also of Greek ancestry, and became a naturalized U.S. citizen on April 17, 1978. Applicant became a U.S. citizen on September 13, 1993. Her children are sixteen and ten years of age, and are U.S. citizens by virtue of being born to a U.S. citizen.

Applicant has lived in the same residence in the U.S. since March 1987. She worked as a project estimator for a carpentry company for November 1988 to October 1991, and was unemployed from November 1991 to July 1992. From July 1992 to March 1993, she worked as an estimator for a construction company. From March 1993 to May 1994, she chose to stay home with her children following the birth of her youngest child. From May 1994 to September 1997 she worked as an estimator for a federal contractor. She has been employed by a defense contractor as a senior estimator since September 1997.

Applicant traveled to Greece for pleasure from August 1995 to September 1995, and again from December 1998 to January 1999. She also visited Switzerland for pleasure in December 1998. She used a U.S. passport on each of these trips.

Applicant's father is 82-years-old and her mother is 73-years-old. They are both citizens and residents of Greece. Her father-in-law is 81-years-old, and is a citizen and resident of Greece. She has one brother who is 49-years-old, and he is a citizen and resident of Greece. She also has a sister-in-law who is a citizen and resident of Greece.⁽²⁾ Applicant maintains weekly to monthly telephone contact with her relatives who live in Greece.⁽³⁾

Applicant own's an apartment in her father's apartment building located in Greece, and the rental income from that apartment is deposited into an account in a Greek bank.⁽⁴⁾ She maintains a savings account with a Greek bank with her father as an additional holder of the account.⁽⁵⁾ The value of Applicant's financial and real estate holdings in Greece is unknown.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁶⁾ The government has the burden of proving controverted facts.⁽⁷⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁸⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁹⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽¹⁰⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽¹¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹²⁾

No one has a right to a security clearance⁽¹³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹⁵⁾

CONCLUSIONS

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.

Based upon the facts in this case, the following Disqualifying Conditions (DC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for an applicant:

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 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists; and*

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.*

DC 1 applies in this case based upon Applicant's relatives being citizens and residents of Greece, coupled with her apparent close ties to those relatives as exhibited by the weekly to monthly contact she has with them, the ownership of an apartment in her "father's apartment building," and the shared account she maintains with her father in a Greek bank. DC 2 applies based upon her husband's father being a resident and citizen of Greece.

I am unable to find that DC 8 applies in this case. While Applicant has admitted she owns an apartment in Greece that produces rental income that is deposited in a Greek bank, and that she maintains a Greek bank account, there is no evidence that permits any inference of the value of any of those assets. There is also no evidence disclosing what assets Applicant possesses in the United States, the value of her United States assets, the net worth of either she or her husband, or their incomes. As the plain language of DC 8 makes clear, it is not every financial interest in a foreign country that causes a security concern, but only a substantial interest. I do not attribute any concern of security significance to Applicant's employment by a Greek bank while she resided in Greece between September 1983 and May 1986. The government has failed to establish that Applicant's foreign financial interests are substantial or that any security concern exists based upon her foreign employment while she herself was a citizen and resident of Greece.

Once the government meets its burden of proving controverted facts⁽¹⁶⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹⁷⁾ Applicant's admissions to all SOR allegations totally dispensed with the need for the government to present any evidence to prove the facts alleged in those allegations.⁽¹⁸⁾ Further, the government is under no duty to present evidence to disprove any Adjudicative Guidelines mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.⁽¹⁹⁾

Applicant admitted every allegation in the SOR without elaboration or clarification. She thereafter failed to respond to the FORM. I have carefully reviewed all evidence contained in the attachments to the FORM, the pleadings themselves, and positive information known about Greece in search of evidence that might support finding the existence of a mitigating condition, including the following:

All information that is known about Applicant and her relatives. The only information known about the relatives is that they exist, are citizens and residents of Greece, and Applicant maintains regular telephonic contact with them. All known information about Applicant has been detailed in the findings of facts.

The following information about Greece and its relations with the United States is significant in determining whether a security concern exists under the known facts in this case:

"The United States and Greece have longstanding historical, political, and cultural ties based on a common heritage, shared democratic values, and participation as Allies during World War II, the Korean conflict, and the Cold War. The Greek Government responded to the September 11, 2001 attacks with strong political support for the United States, unimpeded use of Greek airspace, and the offer of Greek military assets in support of the counterterrorism campaign. Its participation in Operation Enduring Freedom included the stationing of a Greek Navy frigate in the Arabian Sea for almost 2 years - the most distant deployment ever for the Greek Navy. In the summer of 2002, Greek authorities captured numerous suspected members of the terrorist group "17 November." It was a major break in the investigation of the group, which had killed five U.S. mission employees since 1975. The trial of the November 17 suspects is expected to conclude in the fall of 2003. Currently, there is smooth cooperation between U.S. and Greek counterterrorism officials.

About 1.1 million Americans are of Greek origin, and almost 3 million call themselves Greek-American. The large, well-organized Greek-American community in the United States cultivates close political and cultural ties with Greece. Greece has the seventh-largest population of U.S. Social Security beneficiaries in the world.

The United States has provided Greece with more than \$11.1 billion in economic and security assistance since 1946. Economic programs were phased out by 1962, but military financial assistance continued until the early 1990s.

In 1953, the first defense cooperation agreement between Greece and the United States was signed, providing for the establishment and operation of American military installations on Greek territory. The United States closed three of its bases in the 1990s. The current mutual defense cooperation agreement (MDCA) provides for the operation by the United States of a naval support facility that exploits the strategically located deep-water port and airfield at Souda Bay in Crete."⁽²⁰⁾

The information known about Applicant entitles her to receive credit under the "whole person" concept for her stable family life, continued residence in the same home since immigrating to the United States, and her steady employment in the United States, with the exception of one relatively brief period of unemployment and one period when she stayed home to care for her infant child. She also receives credit for rapidly becoming a United States citizen, exclusive use of a U.S. passport for all foreign travel since becoming a United States citizen, and raising her

children as U.S. citizens.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Having considered all available information, I am unable to find any information that would allow me to find any MC applicable in this case. The government has met its burden of proving controverted facts by virtue of Applicant's admission thereto. Applicant failed to present any evidence to demonstrate extenuation, mitigation, or changed circumstances. Accordingly, Guideline B is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. There is no record evidence concerning the sister-in-law. However, Applicant admitted this allegation in her answer to the SOR.
3. There is no record evidence concerning the telephonic contacts with relatives. However, Applicant admitted this allegation in her answer to the SOR.
4. There is no record evidence in support of these allegations. However, Applicant admitted the allegation in her answer to the SOR. The record does not contain any clarification of the allegation that it is her father's apartment building to permit an inference concerning whether he is the owner of the building or merely a resident of the building.
5. There is no record evidence in support of this allegation. However, Applicant admitted the allegation in her answer to the SOR.
6. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
7. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
8. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
9. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
10. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

13. *Egan*, 484 U.S. at 528, 531.

14. *Id* at 531.

15. *Egan*, Executive Order 10865, and the Directive.

16. Directive, Additional Procedural Guidance, Item E3.1.14

17. Directive, Additional Procedural Guidance, Item E3.1.15

18. ISCR Case No. 90-0401 (January 24, 1994)

19. ISCR Case No. 99-0597 (December 13, 2000)

20. United States Department of State, Bureau of European and Eurasian Affairs, October 2003, Background Note: Greece.