

DATE: December 2, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08949

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's relatives in Germany do not raise a security concern under Guideline B. Clearance is granted.

**STATEMENT OF THE CASE**

On February 4, 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 denied or revoked.

Applicant responded to the SOR in writing on March 12, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about May 9, 2003. Applicant did not respond to the FORM. The case was assigned to me on June 27, 2003.

**FINDINGS OF FACT**

Applicant is a 64 year old employee of a defense contractor.

Applicant was born in Germany. He moved to the United States many years ago, <sup>(1)</sup> and became a naturalized United States citizen in 1981. His wife is a citizen of Germany and the United States, and lives with applicant in the United States. He has two adult children, both of whom were born in the United States. The daughter lives in the United States; the son at some point moved to Germany to pursue an apprenticeship opportunity. He still resides there.

Applicant's brother, sister-in-law, and two brothers-in-law are citizens and residents of Germany. None of these family members is an agent of Germany, or in a position to be exploited by Germany in a way that could force applicant to choose between loyalty to them and loyalty to the United States. Applicant's mother-in-law passed away in 1999.

Applicant maintains a bank account in Germany to cover travel expenses and fund occasional presents for his relatives. Applicant states that the account constitutes "about 1.5%" of his net worth.

## **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: The immediate family member in question is not an agent of the foreign power or in a position to be exploited by the foreign power in a way that could force applicant to choose between loyalty to the immediate family member and the United States.

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

## **CONCLUSIONS**

With respect to applicant's immediate family members, I conclude that they are not agents of Germany, or in a position to be exploited by Germany in a way that could force applicant to choose between loyalty to these immediate family members and loyalty to the United States. <sup>(2)</sup>

With respect to applicant's sister-in-law and two bothers-in-law, all of whom are citizens and residents of Germany, there is no evidence that (1) applicant has close ties of affection or obligation to any of them, or (2) these relatives are in a position to be exploited by Germany in a way that could possibly force applicant to choose between loyalty to these relatives and loyalty to the United States.

With respect to applicant's bank account in Germany, the amount on deposit is too insignificant to raise security concerns.

## **FORMAL FINDINGS**

**GUIDELINE B: 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.

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Joseph Testan

Administrative Judge

1. The only evidence offered by Department Counsel, other than the mandatory SOR and Answer to SOR, was a Security Clearance Application and a worthless transmittal letter. I cannot determine from this limited record when applicant moved to the United States.

2. Accordingly, Mitigating Condition 1 is applicable to this case.