

DATE: June 13. 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08817

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 38-year-old computer software engineer was born in Ukraine, but emigrated to the U.S. in 1995 and became a U.S. citizen in 2000. Her 74-year-old mother is the only family member still residing in Ukraine, and Applicant has minimal other ties to that country. She has completed her education, began a professional career, and established a family life in the U.S., with her husband and son, who was born in 1992. She sees the U.S. as her "chosen country." She has credibly expressed an understanding of her security obligations and her intent to act only in support of U.S. interests. Mitigation has been shown. Clearance is granted.

**STATEMENT OF THE CASE**

On January 31, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On February 20, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made based on the written record, without a hearing before a DOHA Administrative Judge. The File of Relevant Material (FORM) was issued on April 16, 2003, and Applicant was informed that any response had to be submitted within 30 days of receipt of the FORM. The reply was due by May 29, 2003, but none was received. The matter was assigned to me for decision on June 9, 2003.

**FINDINGS OF FACT**

Applicant is a 38-year-old computer software engineer employed by a defense contractor. The SOR contains three allegations under Guideline B (Foreign Influence) 1.a., 1.b., and 1.c. Applicant admits the factual part of 1.a., that her

mother resides in and is a citizen of Ukraine. That admission is deemed a finding of fact. Applicant denies the remainder of 1.a. and all of 1.b. and 1.c.

After considering the totality of the evidence derived from the contents of the FORM, I make the following additional FINDINGS OF FACT as to each SOR allegation:

#### Guideline B (Foreign Influence)

1.a. - Applicant's mother resides in and is a citizen of Ukraine (GX 3).

1.b. - Applicant's stepson is a citizen of New Zealand, and resides in that country, after emigrating from Ukraine (GX 3, attachments 1, 2, and 3 (his New Zealand passport, issued on June 16, 2000 and valid until 2010).<sup>(1)</sup>

1.c. - Applicant's 73-year-old father-in-law is a permanent resident alien under U.S. law, and is no longer a citizen of Ukraine (GX 3). He moved to the U.S. in 1995 using a Ukrainian passport stamped in Ukrainian and English, "valid for departure to any country" (*Id.*), which I take to mean valid only to leave Ukraine. The Ukrainian passport he used to enter the U.S. contains a stamp by U.S. authorities stating that he was "admitted as a refugee," with the right to stay for an "indefinite" period. His permanent home is in City A in the U.S. (*Ibid.*).

Applicant's mother is therefore the only member of Applicant's immediate family (of the three cited in the SOR) who still lives in or has any connection to Ukraine. She is a 64-year-old widow, with no living immediate family residing in that country. Applicant, her only child, has been trying to persuade her mother to emigrate to the U.S., but she continues to decline to do so, wishing to "remain in Ukraine for the balance of her life" (*Id.*). Applicant's husband is also Ukraine born, but a naturalized citizen of the U.S., as is her 11 year old son.

The information supporting the SOR as originally written comes from Applicant's two December 2000 Questionnaires for National Security Positions (SF 86) (GX 4 and 5). The remaining relevant evidence/information comes from Applicant's Response to the SOR, and attachments (GX 3, dated February 20, 2003).<sup>(2)</sup> The U.S. has provided substantial humanitarian aid to Ukraine in the recent past (GX 6).

In her response to the SOR, Applicant states the following:

As identified above, the familial attachments stated in the three items above are not in any way substantial factors in leading to potential foreign influence and duress risks. It is my contention that these familial relationships do not make me more susceptible to coercion or duress than any average U.S. citizen. I respectfully request a reversal of your determination of denial. I honestly believe that I can fully support the national defense of my chosen country through appreciation of my engineering talents, experience, and education to work requiring a DoD security clearance.

I find Applicant's expression of her feelings and intentions to be credible, and in the absence of any evidence suggesting to the contrary, I accept the above statement as a finding of fact.

### **POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion 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 emotionally unstable behavior.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

**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 vulnerable to coercion, exploitation, or pressure.

Condition that could raise security concerns and may be disqualifying:

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.

Condition that could mitigate security concerns include:

1. A determination that the immediate family members(s), . . . cohabitant, or associates in a foreign country 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.

Eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the Directive's "whole person" concept, I am not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses.

If the Government meets its initial burden of proof and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

**CONCLUSIONS**

The crux of the Government's concerns is that Applicant may be vulnerable to foreign influence. Under Guideline B, the evidence shows that Applicant's stepbrother and father-in-law no longer live in Ukraine. The stepbrother is now a citizen of and resides in New Zealand. Although Government Counsel has provided as GX 6, a U.S. State Department Background Note on Ukraine, dated January 2003, no such Note has been provided as to New Zealand. Nothing in the record indicates that New Zealand is a potential security threat. The 73-year-old father-in-law is now a Permanent Resident in the U.S. and has a Ukrainian passport that does not allow him reentry into Ukraine.

After considering all the record evidence, I conclude that Applicant's sole current tie to Ukraine is her relationship with her mother. There is no evidence that Ukraine is likely to seek to use Applicant's mother, or the other relatives cited in the SOR, for an improper purpose. There is no evidence that the relatives are in a position to be exploited by Ukraine, or

any other country, in a way that could force Applicant to choose between her affection/love for her mother and her loyalty to the United States. The only evidence is that the cited relatives exist, as described by Applicant.

### Mitigation

Under Guideline B, Disqualifying Condition 1 (family in a foreign country) is applicable, but Mitigating Condition 1 is also applicable, since I conclude that (1) Applicant's mother, stepbrother, and father-in-law are not agents of Ukraine or in a position to be exploited by Ukraine, or any other country; and (2) Applicant has established that she would not comply with any request made or pressure applied by his relatives in Ukraine or elsewhere.

Viewed in the context of Applicant's 8 years of residency in the United States and her contributions to its defense effort, the evidence of record does not create a doubt about Applicant's understanding of her obligations toward the U.S. Based on the overall record evidence, I conclude there is little likelihood that Applicant's mother will be approached by Ukrainian authorities to apply pressure on Applicant to act against U.S. interests, or that her mother would apply such pressure on Applicant. Finally, I conclude that Applicant would respond by rejecting any attempts to apply such pressure. As a result, I conclude that the relationship does not leave her potentially vulnerable to coercion, exploitation, or pressure that could result in the compromise of classified information.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

SOR 1.a. For the Applicant

SOR 1.b. For the Applicant

SOR 1.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.

**BARRY M. SAX**

Administrative Judge

1.

<sup>0</sup> In the FORM, Department Counsel made a motion to amend the SOR as to allegation 1.b., to reflect that Applicant's on-in-law was no longer a citizen of Ukraine but had become a citizen of New Zealand. Applicant did not file any objection and the SOR is hereby amended as requested.

2. The record does not contain a sworn statement by Applicant to the Defense Security Service.