

DATE: June 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30534

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's brother and sister are citizens of and reside in Macedonia. He frequently travels from Kosova to Macedonia to stay with relatives. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his foreign siblings and frequent travel to visit foreign relatives. Clearance is denied.

STATEMENT OF THE CASE

On February 17, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 17, 2004, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On August 11, 2004, the Applicant received a complete copy of the government's file of relevant material (FORM) dated July 23, 2004. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. He indicated he did not wish to change anything. On February 1, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security significant Foreign Influence. The Applicant admits to the following: his brother and sister are citizens and residents of the former Yugoslav Republic of Macedonia. Applicant frequently travels from Kosovo to visit his relatives in Macedonia. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 59 years old, has worked as a linguist for a defense contractor since October 2000, and is seeking to obtain security clearance. Applicant denies he has a brother who is a U.S. citizen residing in Macedonia. Applicant's Security Clearance Application, Standard Form (SF) 86, Item 4, lists a brother who is a U.S. citizen who's address is listed as "unknown." The record is silent as to his brother and sister's occupations.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline B, foreign influence. Under the foreign influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, 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. The Government established the Applicant's brother and sister are citizens and residents of Macedonia. Disqualifying Condition (DC) 1 (E2.A2.1.2.1. *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.) applies.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. (2) An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

The record is silent as to the occupation of his brother and sister and their spouses, if any, and the amount of contact Applicant has with them. Without evidence as to his siblings occupations, I cannot conclude that these individuals are not employees of a foreign intelligence service, 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. Nor can I conclude his contact and correspondence with this siblings is casual and infrequent. Applicant has admitted to frequently traveling to acedonia and staying with relatives. With this limited information, I am unable to make a favorable determination as to ties of affection or obligation. I find against Applicant as to SOR paragraphs 1. a and 1.c.

Applicant denies his one brother resides in Macedonia. The Government submitted no evidence to rebut this. I find for Applicant as to SOR paragraph 1.b.

In reaching my conclusions I have also attempted to considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. However, very little record evidence was provided by either party.

FORMAL FINDINGS

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

Paragraph 1 Foreign Influence: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against 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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

2. ISCR Case No. 98-0419 (April 30, 1999) at p.5.