

DATE: December 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30939

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has lived in the United States since 1987, and became an American citizen in 1997. His father was a general in the Greek Army before retiring in 1970. His father has had no connections to the Greek government since that time and is not in a position to be influenced by them. The same goes for the Applicant's in-laws, who are citizens of the Netherlands. The Applicant's financial interests in Greece are not substantial enough in this case to be of security significance. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On February 18, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 11, 2003, and requested a hearing. The case was received by the undersigned on June 19, 2003, and a Notice of Hearing was issued on June 30, 2003.

A hearing was held on July 23, 2003, at which the Government presented two documentary exhibits. Testimony was taken from the Applicant, who called three additional witnesses and also submitted one exhibit. The transcript was received on August 1, 2003.

FINDINGS OF FACT

The Applicant is 38, married and has a Doctorate in Electrical Engineering. He is employed by a defense contractor University as a Professor, Interim Associate Dean of the Engineering School, Senior Advisor to the Vice Chancellor for

Research and Graduate Education and Interim Director for the Science and Technology Division of the Research Corporation of the University. He seeks to retain a Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has members of his immediate family who are not citizens of the United States and/or may be subject to duress.

The Applicant was born in Greece in 1964. He moved to the United States in 1987 to continue his education. After receiving his Ph.D. he was recruited by the University as an Assistant Professor and has been there ever since. The Applicant became a naturalized American citizen in 1997. The Applicant's wife became a naturalized American citizen in 1993. She is of Dutch descent. Their two children are native born American citizen.

The parents of the Applicant are still living and reside in Greece. His father is now 87 years old. He retired in 1970 as a lieutenant general in the Greek Army. Since his retirement he has had no connections to the Greek government in any capacity. He does not ask the Applicant about his job or classified information. The Applicant testified, "The only thing I've got to say about my father is he is a man of honor, honesty and integrity and that's the way we are." (Transcript at 31-32.) The Applicant's mother is 69 years old and is a homemaker. The Applicant's one brother is also a naturalized American citizen and is a Professor at another university. The Applicant contacts his parents on a fairly regular basis. He calls them weekly and travels to Greece on about a yearly basis, both on vacations and in connection with business trips to Europe. The Applicant provides no monetary support for his parents. (Government Exhibit 2 at 2.)

Some of the Applicant's wife's family are Dutch citizens. Her mother and one brother, an American citizen, live in the United States. The two other brothers live in the Netherlands. The Applicant has met one of them once and the other not at all. It appears that relations between the Applicant and his wife, and her family, are cordial but not overly close. (Transcript at 19, 32-33.)

The Applicant's parents have deeded over to the Applicant and his brother a piece of property that the parents owned in Greece. According to the Applicant, the current market value of the property is approximately \$150,000 to \$200,000. The Applicant has a half interest in the property. (Transcript at 23-24.) The Applicant's net worth in the United States is about \$800,000. (Transcript at 20.)

Mitigation.

The administration of the University, including the Chancellor, strongly support the Applicant's application for a security clearance. Applicant's Exhibit A contains seven very laudatory letters of recommendation from people associated with the University at various levels. All speak of the Applicant's trustworthiness, reliability and diligence.

Several co-workers, including the University Facility Security Officer, testified on the Applicant's behalf. All stated that he is a man of integrity and that they would trust the Applicant with an important matter in their own personal lives. The Applicant is viewed as a leader at the University, despite his young age. (Transcript at 44.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm

of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign influence)

Conditions that could raise a security concern:

- (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;
- (3) Relatives, cohabitants, or associates who are connected with any foreign government;
- (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.

Conditions that could mitigate security concerns include:

- (1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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;
- (3) Contact and correspondence with foreign citizens are casual and infrequent;
- (5) Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections that may influence him, thereby showing untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has close family members who are not citizens of the United States, live outside the United States, at one time were connected to a foreign government, and gave the Applicant an arguably substantial financial interest in a foreign country.

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's father was a senior officer in the Greek Army, but he retired 33 years ago, and has had no involvement with the Greek government since that time. Neither of his parents are currently agents of a foreign power. The span of time since his father was on active duty, in this particular case, vitiates any security concerns brought about by his father's rank.

The Applicant's mother in law is a Dutch citizen, but she currently lives in the United States. The Applicant's relationship with the two brothers in law who live in the Netherlands is cordial at best. They are not agents of the Dutch government.

The Netherlands and Greece are both allies of the United States, with no history of hostility to the United States. The Applicant is adamant in saying that his father would not ask him about his job, and that he would not say anything if asked. Under the particular facts of this case, I find that the Applicant's relatives are not in a position to be exploited by a foreign power.

The Applicant's parents have signed over to the Applicant and his brother a piece of property in Greece. The Applicant's half interest in the property is worth \$75,000 to \$100,000. His net worth in the United States is \$800,000. While the value of the property is not insubstantial, his financial interests in the United States overcome whatever security significance may be presented by the property in Greece.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.f.: 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 the Applicant.

Wilford H. Ross

Administrative Judge