

DATE: April 26, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31667

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The security concerns raised pertaining to a 53-year-old Applicant who was born in Greece and is a naturalized U.S. citizen--with relatively insubstantial foreign financial interests--who has a brother and friend who are Greek citizens and residents, neither of whom appears to be in a position to be exploited by Greece, have been mitigated by the evidence developed herein. Clearance is granted.

**STATEMENT OF THE CASE**

On July 10, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 a clearance should be granted, continued, denied, or revoked.

In two sworn written answers, dated August 1, 2003, and October 8, 2003, respectively, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on January 29, 2004. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He made no further submissions. The case was assigned to me on April 16, 2004.

**FINDINGS OF FACT**

Applicant has admitted all the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a.

through 1.c.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 53-year-old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been revealed.

Applicant was born in 1950 in what was then the Kingdom of Greece--a member of the North Atlantic Treaty Organization (NATO) since 1952. In 1967, a military dictatorship came to power, suspended a variety of political and civil liberties, and forced the king to flee. The dictatorship was overcome by events and was replaced in 1974 following democratic elections. With the abolition of the monarchy, the country became known as the Hellenic Republic (Greece). The U.S. Department of State characterizes the country as "a developed and stable democracy with a modern economy."

The facts about Applicant's background are rather sketchy. In 1967, Applicant entered active service with the Greek Air Force, and remained for nearly 14 years before leaving in 1983.<sup>(2)</sup> During the period from September 1969 until September 1971, he attended a military technical school and non-commissioned officer academy.<sup>(3)</sup>

At some unspecified date, Applicant immigrated to the U.S. and accepted a position with a government contractor. He has been employed by the same company since February 1983, and is now a leadworker.<sup>(4)</sup> The quality of his professional performance has not been characterized.

Applicant married a native-born U.S. citizen in 1975 in Greece,<sup>(5)</sup> and had two children in the U.S. He became a naturalized U.S. citizen in September 1987.<sup>(6)</sup> He considers himself to be a dual citizen of the U.S. and Greece.<sup>(7)</sup> Nevertheless, he contends his loyalties are with his family residing in the U.S. as well as with the U.S. itself.<sup>(8)</sup> Applicant and his wife were divorced in 1998.<sup>(9)</sup>

Applicant's parents are deceased,<sup>(10)</sup> but he has one brother--a citizen of Greece--who still resides in Greece.<sup>(11)</sup> Applicant inherited a house in Greece worth \$15,000.00,<sup>(12)</sup> and that residence is rented to his brother<sup>(13)</sup> for an unspecified monthly amount. He also maintains a Greek savings account with a balance of \$65,000.00.<sup>(14)</sup> Applicant's net monthly take home pay is approximately \$2,500.00.<sup>(15)</sup> He has about \$2,000.00 in monthly expenses,<sup>(16)</sup> leaving about \$500.00 available for discretionary spending. He has an estimated current market value of personal assets of \$258,500.00<sup>(17)</sup> with total estimated liabilities of \$105,000.<sup>(18)</sup> His total estimated net worth is \$180,500.00.<sup>(19)</sup>

Applicant maintains contact with a friend who had served with him in the Greek Air Force. The frequency of the contact is unspecified as is the nature or closeness of the exact relationship.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in

making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**GUIDELINE B - FOREIGN INFLUENCE: 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: (1) not citizens of the United States or (2) 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 and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"<sup>(20)</sup> or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline B. Applicant has been portrayed as a person who is a potential security risk because he has substantial financial interests in Greece that could make him vulnerable to foreign influence. He inherited a house in Greece which is worth \$15,000.00, and maintains a Greek savings account with a balance of \$65,000.00. Such a situation raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In this regard, see Foreign Influence Disqualifying Condition (FI DC) E2.A.2.1.2.8. (*a substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence*).

However, even the most superficial examination of Applicant's financial position would support the conclusion that such foreign financial interests are so insubstantial as to raise Foreign Influence Mitigating Condition (FI MC) E2.A.2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*). The house he owns in Greece is worth \$15,000.00. That is not a typographical error, masking a luxurious mansion. That amount, when contrasted with his U.S. residence--seemingly worth approximately \$250,000.00--exposes the weakness of the government's vulnerability contention.

The Greek savings account, on the other hand, does contain a substantial sum. Once again, upon evaluating the overall facts and circumstances, the amount described, when standing alone, is significant, but when compared with his other assets, does not seem so robust. It is approximately 30% of his estimated net worth.

Applicant has also been portrayed as a person who is a potential security risk because a member of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, his brother and a friend from his air force days--are either not citizens or residents of the United States or may be subject to duress. These situations also raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. 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:

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5. [\(21\)](#)

The residency and citizenship status of Applicant's brother and friend gives cause for concern and raises the issue of potential foreign influence. In this regard, see Foreign Influence Disqualifying Condition (FI DC) E2.A.2.1.2.1. (*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*). It is with some interest that I note that no evidence has been offered by the government indicating any sinister Greek intentions or activities, such as industrial espionage or active collection of foreign economic information, directed towards the United States. Furthermore, when considered in light of the nature of the Greek government--a free and open democratic society--and that government's relationship to the U.S.--a longstanding NATO ally--the overall significance of the brother's citizenship and residency status is minimized, and does not constitute an unacceptable security risk. Considering the absence of a scintilla of evidence that his brother is a target of any intelligence gathering efforts, his residency status does not establish any doubts regarding possible duress.

In this instance, given the rather limited availability of factual information in the record, there is insufficient evidence to support the activation of FI MC E2.A.2.1.3.1. (*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*). While an administrative judge should be country neutral when analyzing the evidence in security clearance review cases, the administrative judge should not be country ignorant. Considering the nature of the Greek government and society, and in the absence of any Greek sponsored industrial espionage or active collection of foreign economic information, it is unlikely that Applicant's brother is in a position to be exploited by Greece in a way that could force Applicant to choose between loyalty to his brother and the United States.

Also, the citizenship and residency of Applicant's friend from his air force days, are of insubstantial concern because there is no evidence that he is a person with whom Applicant has close ties or affection or obligation. In the absence of

such evidence, the application of FI MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*) seems appropriate. Moreover, Applicant's friend resides in a political entity which is a free and open democratic society, and I can see no evidence of attempted exploitation by the Greek government. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline B. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 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. Clearance is granted.

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Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted five items in support of its contentions.
2. Item 4 (Security Clearance Application, dated April 12, 2001) at 3-4.
  3. *Id.*, at 1.
  4. *Id.*, at 2.
  5. *Id.*, at 2.
  6. *Id.*, at 1
  7. *Id.*, at 1.
8. Item 5 (Responses, dated May 21, 2003, to Interrogatories, dated May 1, 2003), at 3.
  9. Item 4, *supra* note 2, at 2.
  10. *Id.*, at 2-3.
  11. *Id.*, at 3.
12. Item 5, *supra* note 8, at 3.

13. Item 2 (Response to SOR, dated August 1, 2003), at 1.

14. Item 5, *supra* note 8, at 4.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

21. ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.