

DATE: October 17, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11570

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a dual citizen of the United States (U.S.) and Greece since his U.S. naturalization in September 2000. He intends to pursue his life and career in the U.S., but remains close to his mother and brother, who are resident citizens of Greece. Applicant has a record of significant contributions to the U.S. defense effort, and is well-regarded by his coworkers and military customer alike for his technical contributions and moral character. However, there exists an unacceptable risk of foreign influence because of his brother's employment for the Greek government and the Greek residency and citizenship of his close family members. Clearance is denied.

**STATEMENT OF THE CASE**

On March 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. [\(1\)](#) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign influence (Guideline B) concerns.

On March 25, 2003, Applicant executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on April 22, 2003, and a hearing was scheduled for May 14, 2003. At Applicant's request, a continuance was granted. Pursuant to amended notice dated May 13, 2003, the hearing was conducted on June 11, 2003. At the hearing the Government submitted two exhibits and Applicant eleven exhibits, all admitted without objections. Testimony was taken from Applicant, from two active duty U.S. military officers cognizant of Applicant's contributions to the Nation's defense, from Applicant's project leader, and from a personal friend. A transcript of the hearing was received by DOHA on June 23, 2003.

**FINDINGS OF FACT**

The SOR alleges foreign influence concerns related to the Greek citizenship and residency of Applicant's mother, an aunt and an uncle, and the Greek citizenship and Greek Department of State employment of Applicant's brother and a cousin. In his Answer, Applicant admitted the Greek citizenship of his family members, all but his brother residents of Greece, and the employments of his brother (stationed in Lebanon), and his cousin in the diplomatic service for Greece. Applicant denied his family members were in positions to make him potentially vulnerable to coercion, exploitation or pressure. Applicant's admissions are accepted, and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 38-year-old aerospace engineer with a doctorate degree awarded in January 1992. He has been employed since January 2001 by a federally funded research and development corporation that provides the U.S. military with engineering support. Applicant seeks a secret security clearance for his duties as a systems software engineer in support of mission planning systems for the military.

Applicant was born in Egypt to a Greek citizen in the diplomatic service for Greece and to a Chilean/Greek citizen born in France to Chilean nationals. Applicant's parents met in the U.S. when she worked at the United Nations. Applicant automatically acquired Greek citizenship at birth through his father.

With their father's diplomatic duties taking the family to several countries, Applicant and his younger brother were raised for the most part outside of Greece. Applicant attended a British school in Italy through second grade. In third grade, he switched schools to a Franciscan American school and joined the Boy Scouts of America organization as a cub scout. His brother remained in the British school. During his adolescence, the family moved to Belgium, on to Israel, and then to the Netherlands. Applicant continued his affiliation with the Boy Scouts, attaining the rank of Life Scout in 1980 while attending a French middle and high school in the Netherlands. As a member of the Transatlantic Council of the Boy Scouts of America, Applicant was significantly influenced by American culture and values.

From 1980 to 1981, Applicant resided in Greece with his family. Applicant pursued his undergraduate education in France, earning the equivalent of a bachelor's degree in 1986. He elected to pursue his graduate studies in aeronautical engineering in the U.S., and attended a private university in the U.S. from September 1986 to January 1992. As a full-time student studying abroad, Applicant was not required to fulfill his mandatory military service for Greece.

On earning his doctorate degree, Applicant elected to continue his career as a scientist in the U.S. with the support of his mother and against the wishes of his father. Since he did not return to Greece to serve his mandatory military duty, Applicant was barred from entering Greece for a period of between one and two years. In October 1995, Applicant was certified as legally exempt from serving in the Hellenic Army Forces due to his immigrant status. Having signed an understanding that he would have to fulfill his military service obligation as he to ever live and work in Greece, Applicant was granted permission to stay in Greece for brief vacations only. Applicant traveled to Greece to visit his mother (his father died in the mid-1990s) in August 2000 on a Greek passport issued in arch 1996 valid for five years to March 2001.

In September 2000, Applicant became a naturalized U.S. citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required. Applicant regarded his acquisition of US citizenship as a renunciation of his Greek citizenship, but he has not made any effort to ascertain whether his acquisition of U.S. citizenship automatically revoked his Greek citizenship. In November 2000 Applicant acquired a U.S. passport that he has used exclusively for foreign travel since, including on trips to see his mother in France in March and December 2001 and Greece in Summer 2001 and Spring 2002.

After Applicant acquired his U.S. citizenship, he attended a career fair where he met with representatives from his current employer, a federally funded nonprofit research and development company (firm X). In January 2001, Applicant commenced work as an information systems engineering lead for the company. At the suggestion of a security official at firm X, Applicant returned his expired Greek passport to the Greek consulate in June 2002, notifying the consulate he did not want the passport extended or a new one issued.

In the more than two years he has been working on mission planning projects for the U.S. military, Applicant has

proven to be a top performer with "a phenomenal work ethic" and innovative approaches to solving the Nation's command control problems. He was chosen as employee of the quarter by the federally funded nonprofit research firm X for his exceptional service between March 2002 and June 2002. The U.S. military officers within the command supported by Applicant's software engineering services regard Applicant as a "major asset" because of his technical leadership, dedication to their mission, and unique ability to apply technological advances to the military's operational environment. (2) Known as a team player, Applicant serves as an excellent mentor for the young active duty military engineers with whom he works. Those in supervisory authority, from the colonel who serves as the program director of the battle management command to firm X's chief engineer and project leader on the military mission planning program, endorse a secret security clearance for Applicant knowing he has family members who work for the Greek government.

Applicant's father, who retired from the Greek diplomatic corps at the rank of ambassador, died in the 1997/98 time frame. Applicant's uncle, also a career Greek State Department employee, retired in the early 1990s. Applicant's brother and a cousin (both Greek citizens) elected to follow their respective father's avocation and pursue a career in the foreign service for Greece. Employees of the Greek State Department, Applicant's brother, and his cousin have been stationed abroad. As of June 2003, Applicant's brother was stationed in Lebanon, his cousin in Greece. Applicant's brother is married to a South African citizen who does not work outside the home. There is no evidence of record to indicate Applicant's cousin is married.

Applicant communicates with his cousin by telephone from a few times per year to less than once a year to discuss family matters. His cousin corresponded by electronic mail on a couple of occasions. Applicant considers his relationship with his cousin to be akin to a friendship rather than close affection. Applicant has seen his cousin's parents, who reside in Greece, on his trips to Greece. His contact with his aunt and uncle are otherwise limited to once to twice per year by telephone.

Applicant has in-person contact with his brother about once per year; he speaks with him by telephone a few times per month on average. When their mother was undergoing active treatment for cancer in Spring 2002, they talked a couple times per week. Applicant has informed his brother of his employer and the fact that his work is in furtherance of U.S. military interests, but he has not discussed any specific projects with him. Applicant is aware his brother works in the Greek Embassy, although he does not know his specific duties.

Applicant's mother, a Chilean citizen from birth, acquired Greek citizenship on her marriage to Applicant's father. A resident of Greece, she travels to Chile about once every two years. When in Chile she stays with relatives for a couple of months. Applicant has a close bond with his 73-year-old mother. He calls her three to five times per week and has visited her about twice per year. He traveled to see her when she had surgery for cancer in Spring 2002 and she stayed with him in the U.S. for a couple of weeks in Fall 2002.

Applicant is financially independent from his family members living abroad. He does not provide his mother or his brother any support or own any foreign assets. His mother rents out two properties in Chile and owns her own home in Greece. Applicant has no interest in inheriting any of those assets and he does not intent to return to Greece to live.

For the past three years, Applicant has been involved in a men's rowing (crew) program. His level of commitment to the program has been substantial, on the order of an hour and a half per morning six days a week and an additional four hours time on the weekends.

## **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other

pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors 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. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Influence**

E2.A2.1.1. 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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;

E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. 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;

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.

Under Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which 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. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern 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 criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless

security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the Government has established its case under Guideline B because Applicant has close ties of affection and obligation to his mother and brother, both Greek citizens (his mother apparently a dual national of Greece and Chile) who reside outside of the U.S. Applicant also has an aunt and uncle in Greece with whom he has dined when in that country. Moreover, as employees of the Greek Department of State, Applicant's brother and cousin actively serve the interests of the Greek government.

Under the adjudicative guidelines pertinent to foreign influence, a security risk may exist when an individual's immediate family members or other persons to whom he is bound by affection, influence or obligation are citizens of, or resident or present in, a foreign country (*see* E2.A2.1.2.1.) or where relatives are connected with any foreign government (*see* E2.A2.1.2.3.).<sup>(3)</sup> Applicant has frequent contact telephonically with his mother, who resides in Greece. While his contact with his brother is less frequent (a few times per month), he clearly has a personal relationship with his sibling, notwithstanding Applicant's demonstrated preference for the U.S. over Greece. Kept apprized of his brother's duty stations for the Greek State Department, Applicant has reciprocated by informing his brother not only that he works for firm X, but that his duties are in support of the U.S. military. The fact that neither sibling is aware of the particular projects or work of the other is more a measure of their respective recognition of what is proper for disclosure than of distance in the relationship. Applicant's contacts with his cousin, uncle, and aunt in Greece are more distant--limited to no more than twice per year, but Applicant also has dined at his uncle and aunt's home when in Greece. Although Applicant is not aware of his cousin's job title, he is aware of his cousin's postings. Applicant knew his cousin was in Pakistan in March 2002 and had been transferred to Greece by mid-March 2003.

The security concerns engendered by the foreign citizenship of close family members may be mitigated where it can be determined that the immediate family members, cohabitant, or associates 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 (*see* E2.A2.1.3.1.). Given the closeness of their relationship, Applicant has a particularly heavy burden to prove he is not potentially vulnerable to foreign influence through his mother. While she worked at the United Nations before her marriage, there is no evidence Applicant's mother is now, or has ever been, an agent of a foreign government. The inquiry is not limited to whether foreign relations are agents of a foreign power. Immediate family members must also not be in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his family member(s) and the United States (*see* mitigating condition E2.A3.2.3.1.). As articulated by the DOHA Appeal Board in ISCR Case No. 00-0317, decided on March 29, 2002:

Under Guideline B, the presence of family members in a foreign country must be evaluated both in terms of (i) possible vulnerability to coercive pressure or influence being brought to bear on, or through an applicant's family members in a foreign country, and (ii) possible vulnerability to noncoercive means of influence being brought to bear on, or through, an applicant's family members in a foreign country.

In her capacity as the spouse of a foreign diplomat who retired at the high rank of ambassador, Applicant's mother is likely to have had contact with influential persons in the Greek government over the years. The death of her spouse, her elderly age, and even her illness, are factors that reduce the risk of undue foreign influence, but that risk still persists, largely because of her close relationship to Applicant's brother, who works in the Greek embassy. Applicant comes from a family with more than thirty years of service to the Greek government at very high levels. From his father and uncle in the past to his brother and his cousin in the present, family members have actively served the interests of a foreign government. Whereas Applicant's mother, brother, uncle and aunt, and cousin remain within reach of, and subject to the jurisdiction of, foreign authorities, there is always a possibility of coercive or especially noncoercive means of influence being brought to bear against these family members.

There are no allegations of foreign preference, but Applicant's respective ties and attitudes toward the U.S. are relevant in assessing whether he is in a position where he could be forced to choose between his close family members and his obligations to the United States. As the child of a foreign diplomat, Applicant was not raised in Greece, but instead in a succession of European countries. His preference for the U.S. even as a youth is evident in his choice of an American school in third grade and in his affiliation with the Boy Scouts of America organization for more than seven years. After completing his graduate education in the U.S., Applicant, in the face of his father's disapproval, elected not to fulfill his military obligation in Greece. His decision had adverse personal consequences in that he was prohibited from entering Greece for between one and two years. In September 2000, Applicant became a U.S. naturalized citizen, knowing and accepting of his obligations of that citizenship. Indeed, he no longer considered himself a citizen of Greece, and made no action to renew his Greek passport when it expired in March 2001. While he has taken no steps to determine whether he is still considered by Greece to be a citizen of that country, he has not actively exercised any right, privilege of Greek citizenship since he acquired his U.S. citizenship.

Applicant's contributions to the U.S. defense effort have been impressive and significant. His technical capability, insight and willingness to apply new technology to the military's operational environment are considered so valuable that the military colonel who serves as the overall director of the battle management strategic program office sent a subordinate to a meeting in his stead so that he could testify in support of Applicant's security suitability. Applicant has demonstrated to his coworkers and to his rowing coach dedication and ethics above reproach. The DOHA Appeal Board recently articulated in ISCR 01-26893:

Evidence of good character and personal integrity are relevant and material under the whole person concept. See Directive, Section 6.3 and Item E2.2.1.1. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. (See ISCR Case No. 01-26893, October 16, 2002, at pp. 9-10).

Acknowledging the greater security concern presented because of his foreign ties, Applicant submits he can be counted on to report any attempt of coercion, exploitation or pressure to his employer and appropriate U.S. authorities. Even with the evidence of Applicant's clear preference for the U.S., the strength of his family ties to Greek resident citizens can raise sufficient concern to be security disqualifying. While Applicant's close relationships with his mother and brother in particular are understandable, and Applicant possesses personal integrity and high moral character, the foreign government connections in this case present an unacceptable security risk, warranting adverse findings as to subparagraphs 1.a. and 1.b. of the SOR. The casual nature of his relationships with his extended relations (aunt, uncle, cousin) leads me to conclude that Applicant is not likely to succumb to any foreign pressure directly or indirectly through these members of his extended family. SOR subparagraphs 1.c. and 1.d. are found for him.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For 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 Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. The director of the battle management strategic planning office--of which the mission planning directorate is a subset-- testified he sent the mission planning director to a meeting in his stead so that he could testify for the Applicant: "I came here in the hope that my high rank and position would lean more towards [Applicant's] case." (Transcript p. 39).
3. The adjudicative guideline pertaining to foreign influence does not make a distinction between foreign countries which respect human rights and democratic institutions and those countries with interests inimical to the U.S.