

DATE: July 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-12372

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esquire, Department Counsel

FOR APPLICANT

Eric R. Stanco, Esquire

SYNOPSIS

Applicant was born in Italy, and became a naturalized U.S. citizen in 1990. In 1997, he reacquired Italian citizenship for himself and his children. He has few U.S. interests or contacts, and maintains close contact with his parents and brothers who still live in Italy, and he still holds his Italian citizenship. He has also experienced significant financial problems through a failed business and a failed marriage, but has provided insufficient evidence in mitigation to show his problems have been resolved. Clearance is denied.

STATEMENT OF THE CASE

On November 7, 2002 the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline F (Financial Considerations). The SOR informed Applicant that, based on investigative information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On January 3, 2003, Applicant responded to the SOR through counsel (Answer) and requested a hearing. The case was assigned to me on March 5, 2003. DOHA subsequently issued a Notice of Hearing setting this case to be heard on April 14, 2003. All parties appeared as scheduled and the government presented three exhibits (GE 1 through 3), which were admitted without objection. Applicant presented two exhibits (AE A and B), which were admitted without objection. Applicant also testified in his own behalf. DOHA received the transcript (Tr) on April 23, 2003.

PROCEDURAL ISSUE

Applicant is not currently employed in a position requiring a security clearance. The company that originally sponsored his application for clearance issued an Office of Personnel Management Clearance Change Notification (Form 562) on January 10, 2003, advising that Applicant was no longer employed by that company. Normally, termination of employment would end processing of a security clearance. However, I have retained jurisdiction of this case for the following reasons: (1) DOHA did not receive the Form 562 until March 10, 2003 after Applicant had answered the SOR and requested a hearing, (2) Applicant's background investigation has been in progress for more than two years, during which time the contract he was working on expired, and he is now seeking employment with other companies engaged in the same work he was doing before, and (3) if he

obtains such a position, he will be required to have a security clearance for any future position with those companies. Accordingly, it is in the best interests of Applicant's due process entitlements under Executive Order 10865, and consistent with administrative efficiency that this matter be heard and decided on the merits at this time rather than returning the case for administrative closure, only to have it processed again when Applicant takes another job.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant was born in Italy, and came to the United States in 1980, when he was 26-years-old. He came with his wife and their infant child, both native-born Italians, and immediately applied for permanent resident alien status. A second child was born to Applicant and his wife in the United States, making that child a U.S. citizen. Applicant, his wife, and their older child became U.S. citizens in 1990, thereby renouncing their Italian citizenship.⁽²⁾

Applicant's parents and two brothers still reside in Italy. He has at least monthly contact with his parents. Applicant's father is a retired accountant and his mother is a housewife. One brother works in construction, and the other works for "the European branch of [a major American defense contractor]." Through the 1980s and early 1990s, Applicant and his wife took their children to visit their families in Italy nearly every year. Applicant felt it important their children know their grandparents and other Italian relatives. Applicant is willing to once again renounce his Italian citizenship if he gets a security clearance.⁽³⁾

In 1997, Applicant learned of a new Italian law that allowed persons who were either born in Italy or whose parents or grandparents are/were Italian citizens, to reacquire or initially obtain Italian citizenship. Applicant, his wife and children subsequently applied for and received Italian citizenship. Applicant initiated this process for the benefit of his children because he was concerned about what would become of the children should anything happen to him and his wife. He wanted their children to be raised by their relatives in Italy should they predecease their children.⁽⁴⁾

Before coming to the United States, Applicant worked in the construction business in Italy. When he arrived here, he and his wife, as partners, started a construction business which grew rapidly through the early and mid-1980s as the real estate market experienced dramatic growth. Applicant built, purchased and managed several commercial properties valued at more than 12 million dollars. He and his wife obtained financing for these transactions through loans from local banks. Those banks required them to personally guarantee the loans, using previous holdings as collateral.⁽⁵⁾

In about 1989 or 1990, Applicant contracted with a local county government to build a large commercial building, which the county would rent from Applicant's company. Applicant obtained financing through a personally guaranteed loan with other holdings as collateral. The building cost about seven million dollars to build. However, after it was completed the county reneged on its contract leaving Applicant to pay the bank note without the anticipated rental income from the county. The note soon became delinquent, leading his lender to demand payment and/or forfeiture of collateral. This, in turn, led to delinquencies on Applicant's other notes which were similarly secured through personal guarantee and collateral. In short, Applicant had become overextended in his leveraged commercial ventures, and the loss of anticipated revenue from his contract with the county caused a chain reaction of loan defaults. Applicant and his wife, as a corporation, filed for Chapter 11 bankruptcy protection in August 1993. In July 1994, they converted their petition to Chapter 7. Their corporate obligations were discharged in June 1995 after liquidation of several secured claims, and their personal obligations were discharged in August 1996.⁽⁶⁾

In 1990, Applicant sued the county for allegedly reneging on their contractual obligations. He prevailed after almost two years, recovering about one million dollars in damages. However, he had already spent more than that on loan payments and attorneys' fees and was unable to repay any of his delinquent loans from those proceeds.⁽⁷⁾

Applicant and his wife continued to do business as a corporation, albeit on a smaller scale, until their marriage began to fall apart and they were divorced in 1999. Applicant gave custody of their children, his share of the marital assets and their business to his wife, and agreed to assume the marital debts. Their business was liquidated soon thereafter. He again filed for Chapter 7 bankruptcy protection in January 2002 and his personal debts were liquidated in May 2002. There is no information available about how much debt was discharged or what debts were included in the petition.⁽⁸⁾

In August 1999, Applicant went to work for a construction company contracted by the State Department for renovations and new construction on American embassies overseas. In October 2000, the company sent him to Italy to manage a construction project there. He lived in Italy for the term of the contract which ran for two years. In September 2002, when his company lost the contract Applicant was left without a job. He stayed in Italy and lived there with his parents until February 2003, when he returned to the United States. He has been living with friends while he seeks

employment with another company doing similar overseas work.

Applicant does not own or rent property in the United States. He has about \$750.00 in an Italian bank account and about \$3,000.00 in savings here. He has not been employed since September 2002. In October 1999, Applicant co-signed a student loan for his daughter. The loan was not included in his 2002 bankruptcy and has been delinquent since about May 2002. Applicant has told the lender he is unable to pay on this loan until he finds work. [\(9\)](#)

Applicant's former employer speaks highly of him. The government contract director during the time Applicant worked in Italy lauds his management style and ability to accomplish project goals even when faced with rapidly changing requirements and work conditions. [\(10\)](#)

POLICIES

The Directive sets forth adjudicative guidelines [\(11\)](#) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, specifically, that Applicant has close ties of affection who are foreign citizens, that he has reacquired his foreign citizenship after being naturalized as a U.S. citizen, and that he has had financial difficulties since 1993, I conclude the relevant adjudicative guideline to be applied here are Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline F (Financial Considerations).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest [\(12\)](#) for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. [\(13\)](#) A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. [\(14\)](#)

CONCLUSIONS

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 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. [\(15\)](#)

The government has established its case as alleged in SOR subparagraphs 2.a and 2.b by showing that Applicant's parents, siblings, and children are Italian citizens. Applicant's ties to his overseas family are strong enough that he ensured his children visited Italy annually as they grew up. His ties of affection are strongest with his family members who still reside in Italy and with whom he has had the most contact. By contrast, the security significance of his ties to his children, now at least 18-years-old, has been attenuated through marital separation and divorce, by the fact his children have lived their entire lives as Americans in the United States, and by the fact he has not lived in the U.S. since October 2000.

Applicant's contacts with his parents and siblings have been significant as he has lived in Italy since October 2000 and lived with his parents from September 2002 until February 2003. He has frequent and regular contact with his parents through monthly telephone calls. While it is apparent Applicant's parents and one brother do not have any connections with any foreign government, Applicant's somewhat cryptic reference to his other brother's employment by a defense contractor does nothing to clarify any possible involvement by his brother with foreign interests. Guideline B Disqualifying Condition (DC) 1 [\(16\)](#) applies based on the presence of the close ties of affection to immediate family members who are foreign citizens living overseas. However, while Mitigating Condition (MC) 1 [\(17\)](#) might apply to Applicant's parents and one of his brothers, Applicant has provided insufficient information, as his burden required, regarding his other brother; indeed Applicant's testimony only served to sustain any questions about his ties to his brother and any potential foreign influence from this relationship. In light of these facts and the fact that Applicant has few, if any interests in the United States, none of the Guideline B MC's apply here. Therefore, I conclude Guideline B against

Applicant.

Guideline C (Foreign Preference). A security concern arises when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. [\(18\)](#)

The Government has established its case as alleged in SOR subparagraphs 1.a and 1.b, in that he exercised foreign citizenship by acquiring Italian citizenship in 1997 after having been naturalized as a U.S. citizen in 1990. When a person is naturalized, he or she takes the Oath of Allegiance which contains language specifically renouncing foreign citizenship. That renunciation is entitled to weight in mitigation, however, if a person subsequently behaves in a way that indicates possible preference for another country over the interests of the U.S., then his security suitability is properly called into question.

Applicant acted to preserve the rights of Italian citizenship for his children in part because he never developed sufficient contacts in the United States to care for them should anything happen to he and his wife. While this conduct may be reasonable in light of his concern for his children, he also obtained foreign citizenship for himself, which he still holds. This is disqualifying conduct under Guideline C DC 1 [\(19\)](#) insofar as it indicates a preference by Applicant for his status as an Italian citizen over his status as an American. Further, SOR subparagraph 1.d alleges that he would only renounce his Italian citizenship if he were granted a security clearance. An expressed willingness to renounce could be viewed as mitigation [\(20\)](#) of possible foreign preference, but it is not something the government can require as a condition of getting a clearance and is not in and of itself disqualifying. Still, Applicant's attachment of conditions to any willingness to renounce is significant in that it indicates he wishes to maintain his status as an Italian citizen.

Finally, Applicant lived in Italy from October 2000 through February 2003. His reason for being in Italy could be characterized as benign in that he was there because his employer sent him there. Normally, one would expect that an employee in such a situation would also have a residence and other interests to return to in the United States. That is not the case here. Applicant has virtually no reason to stay in the United States, and he continues to seek future employment that would allow him to remain overseas with a security clearance yet have no ties to or interests in the U.S. On these facts, none of the Guideline C MC's are available to Applicant, and I conclude Guideline C against the Applicant.

Guideline F (Financial Considerations). A security concern arises when it is shown that a person is either unwilling or unable to manage his finances so that he avoids unreasonable delinquencies. A person who is overextended financially is at risk of engaging in illegal actions to obtain money. [\(21\)](#)

The government established its case as alleged in SOR paragraph 3 that Applicant has accumulated significant debt resulting in two bankruptcy petitions, and that he may still owe approximately \$30,000.00 in delinquent personal debt. Applicant's first bankruptcy petition was filed because his business went bad. It is clear he was overextended in the way he financed his holdings and tried to take advantage of what was, at the time, a very active and growing real estate market. This left him vulnerable to any downturn in his prospects, however, a development contract with a local municipality is normally a fairly safe business venture. In Applicant's case, it is reasonable to assume the breach of contract which caused his business to eventually fail was an unforeseen event. The debts he accumulated were primarily his business debts, and were discharged in bankruptcy proceedings which included resolution and partial payment of several bank loans. Thereafter, Applicant and his wife split up and eventually liquidated their business when they divorced in 1999. Again, it appears that Applicant was left with no choice but to seek personal bankruptcy protection, and that his debts were discharged in May 2002.

Applicant has admitted that the debt alleged in 3.c has not been paid, and he denies owing the other debts listed under paragraph 3 as being included in his 2002 bankruptcy. However, he has not provided sufficient information to show what was discharged in 2002, and whether the personal debts alleged in subparagraphs 3.a, 3.b, and 3.d have, in fact been resolved. In short, he has failed to mitigate the security concerns raised by the government's information contained in GE 2.

Applicant is currently unemployed, has no plan for resolving his debts, and has provided no information to suggest he will be able to avoid similar problems in the future. His financial problems are recent in that they still appear to be unresolved, and they are not isolated as he has experienced near continuous financial difficulty since 1990. Granted, his first bankruptcy was a result of a business downturn. But his continued financial problems, even if possibly due to unforeseen contingencies, remain a security concern absent sufficient information to show these matters will not be a

concern in the future. He has no money and no way of resolving his debts. Since 1990, his business and personal affairs have been characterized by leveraged transactions and large amounts of personal debt. At some point, such circumstances, even if reasonably explained, present an unacceptable risk when assessing his or her security suitability for a clearance. I resolve Guideline F against the Applicant.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Foreign Preference (Guideline C): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Paragraph 2, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Paragraph 3, Financial (Guideline F): AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: Against the Applicant

Subparagraph 3.d: Against the Applicant

Subparagraph 3.e: 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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. GE 1; Tr., p. 18 - 19. I note also that the Oath of Allegiance sworn when they were naturalized contains a specific renunciation of any foreign citizenship and rights thereunder.
3. GE 1; Tr., p. 27 - 28, 32.
4. Tr., p. 29 - 30.
5. Tr., p. 34, 63, 91 - 93.

6. GE 3; Tr., p. 33 - 35, 58 - 59.

7. Tr., p. 35 - 36.

8. Tr., p. 37 - 38, 94; AE A.

9. GE 1; Tr., p. 20 - 26, 39 - 44, 95 - 96.

10. AE B.

11. Directive, Enclosure 2.

12. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

13. *See Egan*, 484 U.S. at 528, 531.

14. *See Egan*; Directive E2.2.2.

15. Directive, E2.A2.1.1.

16. 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;

17. 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;

18. Directive, E2.A3.1.1.

19. E2.A3.1.2.1. The exercise of dual citizenship;

20. E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

21. Directive, E2.A6.1.1.