

DATE: June 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-13662

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire

Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 55-year-old native-born American recently married a woman from Belarus, who he met via the Internet. He made several trips to Belarus and arranged for her to come to the U.S., where they were married in late 2003. Applicant's mother-in-law and brother-in-law remain in Belarus but contacts are not frequent and Applicant cannot communicate with them because of language differences. Applicant was a Marine for 23 years and has held a clearance for a long period. He has told his wife that he would end their relationship before betraying U.S. security interests. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On November 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On December 3, 2004, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on January 5, 2005. On February 15, 2005, a Notice of Hearing was issued, setting the hearing for March 3, 2005. At the hearing, the Government did not present any witnesses but offered four exhibits, which were marked for identification as Government Exhibits (GX) 1-4. Applicant testified and offered eight exhibits, which were marked as Applicant's Exhibits (AX) A - H. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on March 14, 2005.

FINDINGS OF FACT

Applicant is a 55-year-old computer operator. The SOR contains six allegations, 1.a. - 1.f., under Guideline B (Foreign Influence). Applicant admits the factual bases of all six allegations and adds explanations. Applicant's admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's third wife is a citizen of Belarus, currently residing with Applicant in the United States. He met her through an international internet dating service.

1.b. - Applicant's step daughter is a citizen of Belarus, currently living with him in the United States.

1.c. - Applicant traveled to Belarus from February 8, 2003 to February 17, 2003, to meet his future wife and her family. He stayed in an apartment arranged by the internet dating service.

1.d. - Applicant traveled to Belarus for one week in May 2003.

1.e. - Applicant sent his future wife approximately \$200.00 per month while she remained in Belarus, prior to her arrival in the United States in September 2003.

1.f. - Applicant's mother-in-law and brother-in-law are citizens of Belarus and currently reside in that country.

Several of his supervisors and colleagues speak very highly of Applicant and his dedication to U.S. security interests (AX A, AX B and AX C). He has received a number of awards and citations (AX E and AX F).

POLICIES

Each adjudicative decision must include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

As with all DOHA decisions, the facts and circumstances, as applied to the Guidelines, determine the outcome. The literal language of the six suballegations are clearly supported by the evidence of record. The remaining question is whether Applicant has adequately mitigated or extenuated the Government's concerns under Guideline B.

Guideline B (Foreign Influence)

A security risk may exist when an individual's immediate family [members] . . . 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 . . . are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Applicant's wife is 40 years old. He first met his wife on the internet in December 2002. At the time, he was residing in the United States and she was residing in Belarus. As a result of the internet contacts, he spent nine days in Belarus in February 2003, to meet her in person and meet her family. He returned to Belarus a second time in May 2003, and spent one week there. They agreed to marry and he returned to the United States, to arrange a K-1 visa for her and her daughter, who is now 13. He gave her \$200 for living expenses while she was preparing to leave Belarus. Only his wife's mother and brother remain in Belarus. The mother is retired and on a pension, and the brother is a refrigeration mechanic.) (Trat 41, 42). Applicant has met the mother-in-law twice and the brother once (Tr at 40, 41). His wife and her daughter have adjusted well to life in the U.S. and are learning English. Applicant notified his firm's security office of his travels to Belarus (GX 2).

His wife's father is deceased (Tr at 24). His wife's family has had no connections with the government and no financial interests in Belarus beyond some real property worth about \$400 (Tr at 24). His wife works as a seamstress (Tr at 25).

Applicant is from a military family and served 23 years in the Marine Corps before retiring in 1992. He was married twice before, to women of Asian background. Both marriages ended in divorce, the first ended in 1985 and the second in 2000, as a result of his then-wife having an affair. From these marriages, he has three grown American children. While in the Marine Corps, he had a Top Secret security clearance. He has been with his present employer since 1997, mostly working on DoD classified programs. He is respected by his work colleagues and superiors, and there is no record of his ever having had any security-related problems during his decades of valuable service to his country.

He has told his wife that he would end their relationship rather than do anything that might harm U.S. interests (Tr at 26, 27). She intends to apply for U.S. citizenship once she is eligible (Tr at 34). The presence of his wife and stepdaughter in the United States is a positive factor, and her interest in returning to Belarus is limited to seeing her mother. Her ties to the U.S. increase every day with her marriage and her 13-year-old daughter becoming accustomed to the language and culture. Applicant is absolutely clear as to his priorities. "I could never ever give classified information out" (Tr at 45, 46). His life and accomplishments support his statements. Overall, I conclude that any risk is minimal, if not nonexistent.

Condition that could raise a security concern and may be disqualifying:

1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country.

None of the other disqualifying conditions are established by the record.

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable risk.

Belarus was a member of the Former Soviet Union, but is not alleged by the Government to be actively engaged in espionage in the United States. In any case, I find minimal risk that Applicant's mother-in-law and brother-in-law would be pressured to ask Applicant, directly or indirectly, to violate his security obligations. Although the absence of any such undue contacts in the past is not evidence it will never occur, it is nonetheless a positive factor that should be considered along with all other evidence. Moreover, his long history of service to his country supports his statement that he would not even hesitate before reporting any such contacts.

FORMAL FINDINGS

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

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagarph 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE