

DATE: September 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14846

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant had a Ukrainian passport, which she destroyed. The Applicant sends support to her mother, a Ukrainian citizen residing in the Ukraine. The INS has granted the Applicant's petition to sponsor her mother and her mother will be moving to the U.S. as soon as possible. Her sister, stepmother, and stepsister are Ukrainian citizens residing in the U.S. Her aunt and uncle are citizens and residents of Russia. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her relatives' citizenship and residence and her possession of a foreign passport, before it was destroyed. Clearance is granted.

STATEMENT OF THE CASE

On May 23, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 5, 2003, the Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

On July 24, 2003, the Applicant received a complete copy of the file of relevant material (FORM) dated July 2, 2003, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On August 14, 2003, the Applicant responded to the FORM. I was assigned the case on September 16, 2003. The Department Counsel presented five exhibits (Items).

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). The Applicant admits to the following: her mother is a citizen of the Ukraine and resides there; her sister, stepmother, and stepsister are Ukrainian citizens living in the U.S.; her aunts and uncles are not citizens of the U.S. and do not reside in the U.S.; and she provides financial assistance to her mother. 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.

The Applicant is 26-years-old, has worked for a defense contractor since January 2002, and is seeking a security clearance.

The Applicant was born in the Ukraine, formerly part of the Union of Soviet Socialist Republics (USSR). In 1996, the Applicant--then age 19--came to the U.S. to join her father. She attended university from September 1996 through September 2001. In December 2001, she became a naturalized U.S. citizen and in January 2002 was issued a U.S. passport. Her father was born in the USSR and became a naturalized U.S. citizen in February 2001. Her father has remarried and her stepmother and stepsister were born in the USSR. Her father, stepmother, and stepsister live in the U.S. The Applicant has little contact with her stepmother and stepsister either in person or telephonically. She has seen them on only three occasions since meeting them when her father and stepmother married.

Her mother was born in the USSR and is a citizen and resident of the Ukraine. The Applicant visited her mother in the Ukraine twice since coming to the U.S., in 1998 and 2000. Each visit was less than three weeks long. She has telephonic contact with her mother on a monthly basis and e-mails her on occasion. The Applicant provides financial assistance to her mother in the amount of \$150 to \$200 per month. The Applicant has petitioned the Immigration and Naturalization Service (INS) for a visa for her mother's permanent residency in the U.S. In September 2002 the petition was granted. (See response to the SOR) The Applicant is currently finalizing the necessary documents for her mother's move to the U.S. The Applicant's mother lives alone and, due to her health, is currently unemployed.

The Applicant's sister is a citizen of the Ukraine living in the U.S. attending the same university the Applicant attended. She sees her sister frequently. Her sister is planning on becoming a U.S. citizen as soon as possible. Her sister has been granted permanent resident status and is currently engaged to a U.S. citizen.

The Applicant has an aunt and uncle who reside in Russia who she believes are Russian citizens. She maintains minimum contact with these individuals, writing them once a year, usually to wish them a happy new year. None of her relatives work for a foreign government or belong to a foreign military service.

As of April 2002, the Applicant had a boyfriend who was a U.S. and UK citizen. This relationship has ended, and they have not lived together since September 2002.

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence issued guidance clarifying the application of the Foreign Preference adjudicative guideline, hereinafter referred to as the Money memo. The ASDC3I memo states any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States government. The policy makes no exception for using a foreign passport due to personal safety concerns.

When the Applicant became a U.S. citizen, she had a Ukrainian passport which was to expire in 2008. Since the Ukraine does not recognize dual citizenship, her Ukrainian passport became invalid when she became a U.S. citizen. The Applicant has since destroyed this passport by cutting it up. In response to the SOR, the Applicant stated that she had sent a letter to the Ukrainian Consulate in New York renouncing her Ukrainian citizenship. The Applicant has assimilated into the U.S. and is totally loyal to the U.S. Government.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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

Foreign Preference (Guideline C) The Concern: 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. E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying include:

2. Possession and/or use of a foreign passport. E2.A3.1.2.2.

Conditions that could mitigate security concerns include:

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

Foreign Influence (Guideline B) 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.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

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.A2.1.2.1.

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; E2.A2.1.3.1.

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

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* 484 U.S. at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional

history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See Executive Orders 10865 § 2 and 12968 § 3.1(b)*. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when the person acts in such a way as to indicate a preference for a foreign country over the U.S. Security concerns over a possible foreign preference arise from the Applicant's possession of a Ukrainian passport. Disqualifying Condition (DC) 2-⁽²⁾ applies.

The Applicant is a naturalized U.S. citizen who has spent her adult life living in the U.S. She has lived here since age 19, received her university education here, and is employed in the U.S. The Applicant considers herself to be a loyal U.S. citizen and believes her Ukrainian citizenship was renounced in January 2001 when she took the oath of allegiance to become a U.S. citizen. The Applicant wrote a letter to the Ukrainian Consulate in which she renounced her Ukrainian citizenship and destroyed her Ukrainian passport by cutting it up. Although a copy of the renunciation letter is not included in the record it still sufficient to show the Applicant's willingness to renounce her Ukrainian citizenship. Mitigating condition (MC) 4-⁽³⁾ applies. I find for the Applicant as to SOR subparagraph 1.a.

The security concerns underlying the Money memo are the possession and use of a foreign passport in preference to a U.S. passport which raise doubts as to whether the person's allegiance to the U.S. is paramount. Additionally, an individual with a foreign passport could facilitate foreign travel unverifiable by the U.S. She has complied with the requirements of the Money memo. The Applicant does not possess and has not used a foreign passport in preference to her U.S. passport. She has destroyed her foreign passport and it cannot be used for unverifiable foreign travel.

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under Guideline B, the security eligibility of an applicant is placed into question when the person has immediate family or other persons to whom she is bound by affection who are not citizens of the United States, reside in a foreign country, or may be subject to duress. The Applicant's mother is a citizen and resident of the Ukraine. Her sister, stepmother, and stepsister are citizens of the Ukraine residing in the U.S. The Applicant's aunt and uncle are citizens and residents of Russia. Thus, DC 1-⁽⁴⁾ applies.

The Applicant has a heavy burden of persuasion to demonstrate she is not at risk of being vulnerable due to family ties. She must show close relatives are not in a position to be exploited by a foreign power. Her mother is currently unemployed due to her health and her sister is a college student living in the U.S. There is no showing her mother or sister are agents of a foreign government. The Applicant's contact with her mother and sister cannot be said to be causal or infrequent and, therefore, MC 3 does not apply.

Although the Government established a *prima facie* case against her, she has nevertheless, successfully mitigated those security concerns. Her mother's presence in the Ukraine does not represent a credible security risk to this Nation. The Applicant provides support to her mother in the Ukraine. However, the Applicant has petitioned for a visa for her mother's permanent residency in the U.S. and that petition has been granted. Her mother will be moving to the U.S. in the near future. MC 1-⁽⁵⁾ applies. The Applicant's mother is unemployed due to health. The Applicant sends her support

of \$150 to \$200 per month. The Applicant support of her mother, in this instance, has no security relevance. Finding is for Applicant as to SOR subparagraphs 1.a., and 1.g.

At one time the Applicant dated a dual U.S. and UK citizen. She no longer dates this individual. I find for her as to SOR subparagraph 1.b.

The Applicant's sister is a citizen of the Ukraine living in the U.S. attending college. Her sister is a permanent U.S. resident, currently engaged to a U.S. citizen, and intends to become a U.S. citizen as soon as possible. MC 1 [\(6\)](#) applies. I find for the Applicant as to SOR subparagraph 1.c.

The Applicant's stepmother and stepsister are Ukrainian citizens living in the U.S. The Applicant has little contact with them either in person or telephonically, and has seen them only three times since first meeting them when her father and stepmother married. The contact with them is minimal as are her ties to them. C 1 applies and I find for the Applicant as to SOR subparagraphs 1.d. and 1.e.

The Applicant's aunt and uncle are citizens of and reside in Russia. Her contact with them is limited to one letter a year, usually to wish them a happy new year. Her ties with these individuals are not strong and her contact is minimal. MC 1 applies and I find for the Applicant as to SOR subparagraphs 1.d. and 1.e.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Foreign Preference (Guideline C): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Paragraph 2 Foreign Influence (Guideline B): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: For the Applicant

Subparagraph 2.g.: 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. Clearance granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
3. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
4. DC 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.A2.1.2.1.
5. MC 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.A2.1.3.1.
6. MC 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.A2.1.3.1.