

KEYWORD: Personal Conduct

DIGEST: Applicant entered into a five-year spouse-like relationship with an illegal alien shortly after terminating a relationship with her ex-husband, who was also an illegal alien. Such conduct raised personal conduct concerns. Her knowing violation of federal law pertaining to harboring an illegal alien and subsequent claim she did not know the man she had a second relationship with was an illegal alien raises concerns about her judgment, trustworthiness, and willingness to comply with rules and regulations. Applicant was unable to mitigate personal conduct concerns raised. Clearance is denied.

CASENO: 02-19136.h1

DATE: 01/31/2005

DATE: January 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19136

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell, Esq., Department Counsel

FOR APPLICANT

Edward Delgado, Labor Representative

SYNOPSIS

Applicant entered into a five-year spouse-like relationship with an illegal alien shortly after terminating a relationship with her ex-husband, who was also an illegal alien. Such conduct raised personal conduct concerns. Her knowing violation of federal law pertaining to harboring an illegal alien and subsequent claim she did not know the man she had a second relationship with was an illegal alien raises concerns about her judgment, trustworthiness, and willingness to comply with rules and regulations. Applicant was unable to mitigate personal conduct concerns raised. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On September 4, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-Applicant failed to meet the personal conduct (Guideline E) personnel security guidelines of the Directive. Applicant answered the SOR in writing on September 26, 2003, and elected to have a hearing before an administrative judge. The case was assigned to another Administrative Judge on October 30, 2003, however, due to caseload considerations was reassigned to me on March 5, 2004. On April 9, 2004, I convened a hearing via video-teleconference to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance.

The government offered three documents, which were admitted without objection as Government Exhibits (GE) 1 through 3. The Applicant offered six documents, which were admitted without objection as Applicant Exhibits (AE) A and F. During the video-teleconference hearing, Applicant requested to submit four additional documents. Those additional documents were timely received by facsimile and admitted without objection as AE G through J. DOHA received the transcript (Tr.) of the proceeding on April 21, 2004.

FINDINGS OF FACT

Applicant is a 27-year-old single mother, who has two young children, a seven-year-old daughter, and a four-year-old son. Applicant is a high school graduate. She is employed as a personnel security specialist for a defense contractor and has worked for her employer since April 2002. She was initially hired as a dispatcher, a position she held for six months before assuming her present position. She seeks a security clearance in conjunction with her job requirements.

Applicant was previously married from December 1997 to June 2001, to a man who was an illegal alien. GE 1, p. 5. Applicant's first and now ex-husband is the father of her daughter. Applicant testified she had no reason to believe her ex-husband was an illegal alien because he was employed when she met him. Tr. 46. She further testified she did not learn her ex-husband was an illegal alien until she was pregnant with their daughter. Tr. 46. Applicant's ex-husband provides \$200.00 monthly child support for their daughter.

In 1999, Applicant became involved in a long term spouse like relationship with another man (ex-boyfriend) for approximately five years. Tr. 38. Her ex-boyfriend was also an illegal alien. Applicant testified she did not know he was an illegal alien until she was pregnant with her son. Tr. 32. Applicant further testified her ex-boyfriend lost his job because his employer discovered he did not have a green card. Tr. 41. Her son was born in June 2001. Tr. 33.

Applicant completed her security clearance application (SCA) in May 2002. The Defense Security Service interviewed Applicant two times. The first time was in May 2002 and the second time was shortly thereafter at Applicant's request. Applicant indicated in both interviews she was aware her ex-boyfriend was an illegal alien. Tr. 21.

In February 2003, Applicant and her ex-boyfriend rented an apartment together. He was not employed at the time and she knew he was an illegal alien. Tr. 42-43.

When Applicant completed her SCA, she listed her ex-boyfriend under "Current spouse-like relationship" and his country of citizenship (not United States). GE 1, p. 6. Tr. 33. Applicant testified she first became aware that having her ex-boyfriend in her life was a security problem when she began her current position as personnel security specialist. Tr. 33.

Applicant separated from her ex-boyfriend in May 2003 and subsequently severed her relationship with him. Tr. 44, 49-50, 59, 64. After separating from him, she began a new relationship with another man in late fall 2003. Tr. 45. He is a

United States citizen. Tr. 46.

Referring to her relationship with her ex-boyfriend, Applicant testified, "When I was involved with him I was not fully aware of the seriousness of this matter. I no longer have a personal relationship with him." Tr. 31. When she became aware her relationship with her ex-boyfriend was a problem, she sought guidance from her company's business manager and director of human resources. Tr. 55.

In June 2003, Applicant filed for and received a restraining order against her ex-boyfriend as well as the necessary paperwork to establish a parental relationship and custody of her son and set up a separate household with herself and two children. AE G through J. Applicant's relationship with her ex-boyfriend had become violent, which prompted her to request a restraining order in June 2003. AE G, AE J. At the time of the hearing, Applicant had an informal arrangement with her ex-boyfriend regarding child support and visitation. Tr. 50.

Pertinent federal statutory language: [\(3\)](#)

Any person who-

knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.

The statute provides that such conduct is a felony.

Applicant is a trusted and valued employee of her company. She is held in high regard by her supervisors. Tr. 50-62, AE B-C.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure (2) of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant lived in a spouse-like relationship with an illegal alien from 1999 to 2002 and that during that time knowingly harbored an illegal alien in violation of 8 U.S.C.1324, § 274. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and in part through Applicant's admissions each of the allegations contained in the SOR. Applicant's explanation that she did not knowingly harbor an illegal alien might carry more weight were it not for her history. Applicant was previously married to an illegal alien from December 1977 to June 2001. She claims she did not know her ex-husband was an illegal alien until she was pregnant with her daughter, which would have been in approximately 1998.

In 1999, Applicant became involved with another man, who was an illegal alien. She was involved with him in a five-year relationship and had a son with him in 2001. She also claims she did not know her ex-husband was an illegal alien until she was pregnant with her son. She maintained a relationship with him until May 2003 and admits she knew he was an illegal alien from 2001 to 2003.

In April 2002, she began her job with her current employer and six months later assumed a position with her employer that required a security clearance. It was at this point, her relationship with her ex-boyfriend came under scrutiny.

Applicant's explanation of not knowing her ex-boyfriend was an illegal alien might have been more plausible were it not for the fact she had just gotten out of a relationship with her ex-husband, who was also an illegal alien. What Applicant suggests is that she did not engage in the usual and customary background inquiries one might ask in such situations. This conversation would be particularly pertinent in her case given her very recent experience with her ex-husband.

Clearly, the issue of being associated with an illegal alien became a concern to Applicant when she assumed her current position. Until then, the evidence suggests her association with either man and their illegal alien status was not of concern to her. Although she is no longer involved with the two men who are the fathers of her two children, she is likely to remain be involved with them because of their parental rights.

In short, Applicant's actions taken as a whole with regard to her ex-boyfriend constitute the knowing harboring of an illegal alien and a disregard for the law.

Disqualifying Conditions applicable: DC 4: Personal conduct . . . that increases an individuals's vulnerability to coercion, exploitation or duress . . . ; DC 5: A pattern of . . . rule violations . . . ; and DC 6: Association with persons involved in criminal activity.

Mitigating Conditions applicable: MC 5: The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or *duress*; and MC 7: Association with persons involved in criminal activities has ceased.

Had Applicant not had two back-to-back relationships with illegal aliens within a short time, I may have been inclined to give her the benefit of the doubt. Her actions and choices speak for themselves. One cannot engage in such behavior and expect to be entrusted with a security clearance. To Applicant's credit, she is a valued and trusted employee and has taken steps to correct the problem. Further time is necessary to evaluate her future actions. On balance and considering all the evidence, I find against Applicant on SOR ¶ 1.

The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the directive, to the evidence presented. Under the Applicant's current circumstances a clearance is not warranted, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of her security worthiness. Additionally, this determination does not question the Applicant's patriotism and should not be seen as such.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. 8 U.S.C. 1324, § 274(a)(1)(A)(iii). GE 3.