

DATE: April 28, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20210

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has either paid off or is paying, pursuant to a consolidated debt management plan, all of her alleged past due indebtedness. Her past due indebtedness was the result of a series of periods of unemployment. She is now gainfully employed and has a positive monthly cash flow of \$1,300. She has also renounced her Hungarian citizenship and surrendered her Hungarian passport. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On September 22, 2003, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on October 20, 2003.

The case was received by the undersigned on February 6, 2004. A notice of hearing was issued on February 27, 2004, and the case was heard on March 24, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on April 6, 2004. The issues raised here are whether the Applicant's Financial Considerations and alleged Foreign Preference militate against the granting of a security clearance. [The Applicant admits that only three of the alleged nine past due debts are still outstanding; i.e., subparagraphs 1.a.-1.c. She also admits to the underlying factual bases for her alleged Foreign Preference.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The

Applicant is 45, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline F - Financial Considerations

The Applicant was unemployed for "three months" in 1993, for "five to six months" in 1994, and for "ten months" in 2001~2002 (Transcript (TR) at page 27 line 16 to page 29 line 5, at page 49 line 8 to page 51 line 17). All of these lay offs were attributed to down turns in the economy; and as a result, the Applicant fell behind in her bills (*id*). She has engaged the services of a consumer counseling service, and has addressed all of her alleged past due indebtedness (TR at page 26 line 16 to page 27 line 15, and Applicant's Exhibit (AppX) A). She has recently purchased a home, and has a positive monthly cash of about \$1,300 (TR at page 41 lines 10~19, at page 53 lines 15~23, and AppX D).

1.a. The Applicant was indebted to a credit card company in the amount of about \$4,866 in past due indebtedness (Government Exhibit (GX) 2 at page 2). Through her consolidated debt management plan, she has paid this down to about \$2,409, and plans to have it paid off in about a year (TR at page 29 lines 23~25, at page 55 lines 9~13, at page 58 lines 9~18, and AppX A).

1.b. and 1.c. The Applicant is indebted to a bank in the amount of about \$4,407 in past due indebtedness (*id*). Through her consolidated debt management plan, this debt will also be paid off in about a year (*ibid*).

1.d. The Applicant was indebted to a second bank in the amount of about \$163 in past due indebtedness (GX 5 at page 2). Through her consolidated debt management plan, this debt has been paid off (TR at page 30 line 2 to page 31 line 2, at page 33 lines 7~10, at page 55 lines 2~5, AppX A, and AppX F at page 2).

1.e. The Applicant was indebted to a gasoline card company in the amount of about \$73 in past due indebtedness (GX 5 at page 2). Through her consolidated debt management plan, this debt has also been paid off (TR at page 31 lines 3~5, at page 33 lines 7~10, at page 55 lines 2~5, AppX A, and AppX F at page 1).

1.f.~1.i. The Applicant was indebted to the Internal Revenue Service (IRS) in the amount of about \$3,992 in back taxes (GX 4). She has paid this tax debt (TR at page 33 line 21 to page 35 line 9, at page 55 lines 6~8, and AppX B).

Foreign Preference

2.a. and 2.b. The Applicant was born in the United States to Hungarian refugees (GX 3 at pages 2~3). She was proud of her heritage, and sought and received dual nationality with Hungary in 1994 (*id*). She also received an Hungarian passport soon thereafter (*ibid*). Since being appraised of the incompatibility of being a dual national and holding a security clearance, the Applicant has renounced her Hungarian citizenship and surrendered her Hungarian passport (TR at page 35 line 12 to page 36 line 25, at page 38 line 10 to page 39 line 11, at page 62 line 10 to page 63 line 2, and AppX C).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with

knowledge of the consequence involved.

e. Absence or presence of rehabilitation.

f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline F (financial considerations) and Guideline C (foreign preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

The Applicant has a "history of not meeting [her] financial obligations," and an "[i]nability . . . to satisfy debts." These are the first and third disqualifying conditions under Financial Considerations. The third mitigating condition is clearly applicable here, however, as her financial difficulties were a result of "conditions . . . largely beyond . . . [her] control (e.g., loss of employment . . .)." The Applicant is now gainfully employed, has credit good enough to purchase a home, has a positive monthly cash flow of \$1,300, and has addressed all of her alleged past due indebtedness. Mitigation is shown; and as such, Guideline F is found for the Applicant.

As to the Applicant's alleged Foreign Preference, she sought and was given Hungarian citizenship in 1994. She was also given an Hungarian passport. Thus the first two disqualifying conditions are applicable; i.e., there was an "exercise of dual citizenship," and the "[p]ossession . . . of a foreign passport." The Applicant has countered these, however, by complying with the last mitigating condition and "renounc[ing] dual citizenship," and by complying with the *Money memorandum* by surrendering her foreign passport. Mitigation is shown, and Guideline C is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her past financial difficulties and foreign preference. The Applicant has thus met the mitigating conditions of Guidelines C and F, and of Section E.2.2. of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guidelines C and F.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the Applicant.

h. For the Applicant.

i. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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.

Richard A. Cefola

Administrative Judge