

DATE: November 23, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23806

ECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has voted in a Greek national election in 1999, and has retained his Greek identification and driver's license. He retains a rental apartment in Greece and has payed Greek property taxes for tax years 2000 through 2004 for the apartment. Additionally, while he has stated that he is willing to renounce his Greek citizenship, he failed to attempt to do so when he had the opportunity. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On February 6, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed 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 Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed a notarized response, dated March 3, 2004, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

This case was assigned to this Administrative Judge on May 20, 2004, to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on October 6, 2004, and the hearing was conducted on October 26, 2004.

At the hearing, Department Counsel offered four documentary exhibits (Government's Exhibits 1-4) and no witnesses were called. Applicant offered seven documentary exhibits (Applicant's Exhibits A-G) and offered his own testimony. After the hearing, the record was left open, and Applicant offered an additional documentary exhibit, two letters, dated November 10 and November 12, 2004, consisting of one page each (Exhibit H), which was not objected to by Department Counsel and has been entered into evidence. The transcript (Tr) was received on November 10, 2004.

FINDINGS OF FACT

The SOR was based on (Guideline C) Foreign Preference, related to Applicant's exercise of dual citizenship with the United States and Greece and (Guideline B) Foreign Influence concerns because of the foreign residency and/or citizenship of close family members and friends, and Greek property ownership. The SOR contains eight allegations, 1.a. through 1.h., under Guideline C and six allegations, 2.a., through 2.f., under Guideline B. Applicant has admitted all of the SOR allegations with the exception of 2.b. and 2.e. The admissions are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant, and upon due consideration of that evidence, I make the additional Findings of Fact:

Applicant is 27 years old, single and is employed as a Communications System Engineer by a United States defense contractor. He received a Bachelor of Science and a Bachelor of Arts Degree from a United States university and a Masters Degree of Science from another United States university.

Paragraph 1 (Guideline C - Foreign Preference) The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States. Among the allegations is that Applicant exercised dual citizenship with Greece and the United States.

Applicant was born in the United States to Greek parents. As a result, Applicant was born and has remained a dual Greek and United States citizen. Shortly after his birth, his family moved back to Greece, where he lived until he moved to the United States in 1996, to attend college. While he was in college in the United States, Applicant worked in Greece in the summers of 1997 through 2000.

In 1999, Applicant voted in the Greek national elections. He testified that this was required of all Greek citizens, who were present in the country at the time, and that he does not intend to vote in Greek elections again (TR at 27-28).

Applicant has filed tax returns for tax years 2000 through 2003 to pay for property taxes for an apartment that he inherited in Greece in 1999, and which he continues to own as rental property. He pays approximately \$500 a year for taxes (TR at 28-29, 56). The apartment will be discussed more fully under Guideline B - Foreign Influence.

Applicant first received a Greek identification card when he was 14 years old. (TR at 29-30). He continues to retain this active Greek identification card that has no expiration date, and is required to be maintained and held by all Greek citizens. This identification card can be used for other rights pertaining to Greek citizenship such as voting and potential travel within the European Union. Applicant also retains his Greek driver's license, issued in 1995, before he moved to the United States (TR at 30).

Applicant testified that he was willing to relinquish his Greek identification card and Greek driver's license, and the record was held open for him to do so (TR at 46). After the hearing Applicant submitted a letter from the Greek Consulate General in Los Angeles, which stated that the Consulate General was not authorized to accept such documents (Exhibit H). There was no indication that Applicant attempted to return these documents to government representatives in Greece. Applicant also testified that he was willing to renounce his Greek citizenship, and the record was also held open for him to do so (TR at 26-27, 56-60). No evidence was submitted to indicate that Applicant made any attempt to renounce his Greek citizenship.

Finally, Applicant still is required to serve in the Greek military, if he remains in Greece for more than 30 days (TR at 30-31).

Paragraph 2 (Guideline B - Foreign Influence) The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

Applicant's mother and father are Greek citizens who reside in Greece. Applicant's mother is a homemaker and his father is a business consultant. Neither of them has ever been employed by the Greek government. Applicant's brother is

also a Greek citizen, who is residing in the United States, while he attends college. He also has never been employed by the Greek government. Applicant maintains telephonic or e-mail contact with his family members two or three times a week. Since he moved to the United States in 1996, Applicant has traveled two times a year to Greece to see his family, with the exception of 2003 and 2004, when he went one time each year (TR at 33-34).

Applicant maintains friendship with three friends, whom he met in Greece, and who are Greek citizens. Two of the three are dual citizens of the United States, and while two of them were in the Greek military, none of them are now. With the exception of the military, none of his friends has ever been employed by the Greek government. His contact with them averages one time a month or less (TR at 34-35).

As discussed above, Applicant inherited an apartment in Greece in 1999, and he continues to own it as rental property. Applicant estimates the value of the apartment at \$50,000, and he earns \$300 a month from rent. His father manages the property for him, and he uses some of the profit to pay off Applicant's student loans (TR at 35-37, 56-57).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration

and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern 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 criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines C and B:

(Guideline C - Foreign Preference)

Guideline C is based on actions taken by an individual which indicate a preference for a foreign country over the United States. Considered in total, Applicant's voting in a Greek national election in 1999, his retention of his Greek identification and driver's license and his paying property taxes for tax years 2000 through 2004 for a rental apartment that he retains in Greece, raises serious Foreign Preference (Guideline C) concerns. While Applicant stated he was willing to renounce his Greek citizenship, his failure to take any action in that regard must also be considered adversely to Applicant.

Because of all the reasons stated above, Disqualifying Condition (DC) (E2.A3.1.2.1.), the exercise of dual citizenship, applies to this case. DC (E2.A3.1.2.6.), using foreign citizenship to protect financial interests, applies as a result of Applicant paying Greek property taxes for his rental apartment. Finally, I also find that DC (E2.A3.1.2.8.), voting in foreign elections, must also be considered adverse to Applicant. While Mitigating Condition (MC) (E2.A3.1.3.4.), stated willingness to renounce dual citizenship, could be argued to apply because of Applicant's statements, since Applicant failed to take any step after the hearing to renounce his Greek citizenship, I will not consider it to apply to this case. I resolve Paragraph 1, Guideline C against Applicant.

(Guideline B - Foreign Influence)

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. DC (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, must be considered in assessing Applicant's current suitability for access to classified information. DC (E2.A2.1.2.8.), a substantial financial interest in a

country that could make the individual vulnerable to foreign influence, has to be considered because of the Greek rental property owned and maintained by Applicant.

The security concerns engendered by the foreign citizenship and/or residency of such close family members may be mitigated where it can be determined that the immediate family member(s), 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 an individual to choose between loyalty to the person(s) involved and the United States, Mitigating Condition (MC) (E2.A2.1.3.1.). Regarding Applicant's Greek relations, there is no evidence of any undue influence ever being exerted by any foreign authority. None of his family members have been engaged in professional or business pursuits which would cause attention to their activities. Neither Applicant's mother, father or brother are, or have been, employees of the Greek government, nor would they be subject to coercion. I resolve Paragraph 2, Guideline B against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2. a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: Against 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 Applicant.

Martin H. Mogul

Administrative Judge

