

DATE: October 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00083

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 44-year-old employee of a defense contractor, is married to a citizen of the Ukraine and has had numerous other contacts with foreign women prior to his marriage including a former marriage to another citizen of the Ukraine. His father-in-law is an employee of the Bureau of Mines of Ukraine. Clearance is denied.

STATEMENT OF CASE

On March 14, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated March 25, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on July 9, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not do so. The case was assigned to, and received by, this Administrative Judge on September 16, 2003.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations in the SOR relating to foreign influence. The admitted facts are hereby incorporated as findings of fact.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant joined a foreign travel club in 1994 that promotes contacts with foreign women for the purpose of dating and forming relationships. He has been married twice to women whom he met in this way. Both are from the Ukraine. He has also traveled with other women to several other countries abroad. One contact with whom he traveled was an engineer employed by the Government of Belarus.

Applicant's father-in-law is an employee of the Bureau of Mines in the Ukraine. His mother-in-law formerly worked there. The evidence is unclear whether the bureau is a government entity.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of and residing in a foreign country may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

Such security concerns could be mitigated by a determination "that the immediate family members 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." Directive, ¶ E2.A2.1.3.1. Another mitigating factor is when "Contacts and correspondence with foreign citizens are casual and infrequent." Directive, ¶ E2.A2.1.3.3.

CONCLUSIONS

Applicant has a history of multiple contacts with women who are foreign citizens from a variety of nationalities that indicates a lack of sensitivity to the requirements of national security. While the random social contact with women friends abroad might not raise security questions the fact that he has married two citizens of the Ukraine, a country formerly in the Soviet Union and still one that is regarded as politically hostile to human rights and U.S. interests, does not speak well for Applicant's sensitivity to security concerns.

Under the Directive the Government has alleged a number of Disqualifying Conditions (DC) all of which relate directly or stem from his marriage to a citizen of Ukraine and prior contacts with numerous other foreign women including an

earlier marriage to a foreign citizen. The allegations set forth sufficient information to justify a finding against Applicant under Guideline B. (DC 2)

No evidence was offered by the Applicant to indicate that the parents of his wife are not agents of a foreign power that might mitigate the allegation (MC 1) nor can it be mitigated on the theory that contacts with foreign citizens are only casual (MC 3) since he is now married to and lives with a foreign citizen. There is a rebuttable presumption that Applicant has ties to and affection for his parents-in-law and nothing has been submitted to rebut that presumption.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline B AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against 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

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1 l.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge