

DATE: September 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02004

ECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

SYNOPSIS

Applicant is a 49 year-old native born United States citizen, who served honorably for seven years in the United States Air Force. Applicant's wife, a citizen of Russia, has resided in the United States for seven years and is in the process of becoming a United States citizen. The evidence establishes that, because of Applicant's strong attachment to the United States and his virtually non existent relationship with his wife's family in Russia, Applicant is not vulnerable to foreign influence and not in a position to be exploited in a way that could force Applicant to choose between loyalty to them and loyalty to the United States. litigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On September 18, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on Foreign Influence (Guideline B) concerns.

Applicant filed a notarized response, dated October 10, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On April 29, 2004, this case was assigned to another Administrative Judge, but because of medical considerations, on May 10, 2004, the case was reassigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was originally issued to the parties on June 4, 2004, and the hearing was set for June 24, 2004. Applicant's counsel filed a Motion to Continue the hearing, which was granted for good cause, and the hearing was ultimately held on July 7, 2004.

At the hearing, Department Counsel offered four documentary exhibits (Exhibits 1-4), and no witnesses were called. Applicant offered 17 documentary exhibit (Exhibits A-Q) and offered his own testimony. All of the documents were accepted into evidence without objection. The transcript was received on July 27, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family, specifically his wife and other family members are not United States citizens and some reside in a country other than the United State. The SOR includes four allegations under Guideline B (Foreign Influence). In his response to the SOR, Applicant admits all of the allegations 1.a. through ,l.d. The admitted allegations are incorporated as findings of fact.

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

Applicant is a 49 year old employee of a defense contractor, and he seeks a security clearance. He is a native born United States citizen. Applicant was married and divorced two previous times, and he has a 12 year old son from one of the previous marriages, who is a United States citizen. Applicant was honorably discharged from the United States Air Force in 1990. He served from 1983 to 1990 (Exhibit E).

Guideline B (Foreign Influence)

Applicant has been married to his current wife for seven years. He met her through an international dating agency. His wife was born in Russia and is a Russian citizen. She was a special education teacher in Russia. They were married in 1997 in the United States, and she has resided here since then. For the past five years she has been a pre-school teacher in a Jewish community center. Currently, she is a permanent resident of the United States, and she is in the process of becoming a United States citizen (TR at 28-32).

The mother of Applicant's wife still resides in Russia, and she works as an assistant principal at a public school. His wife and his mother-in-law communicate approximately two times a month. Her father is deceased. Applicant's wife's uncle was a general in the army of Russia, but he retired in 1991 and is now in the clothing business. His wife communicates with her uncle one or two times a year. Applicant has no regular contact with his wife's mother or uncle.

Applicant traveled to Russia two times in 1996, first to meet the woman, who is now his wife, in person, and the second time to see her again. The next trip was with his wife in 1999, to visit his wife's family. The last trip he made to Russia was in 2000, because of the severe illness of his wife's father (TR at 33-36).

Applicant introduced five letters of recommendation from individuals who have known him personally and professionally, They spoke very highly of Applicant's dedication and trustworthiness (Exhibits F-J).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is

nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONSBased on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of foreign influence. Applicant's wife is a citizen of Russia. His wife's mother and uncle are citizens and residents of Russia, and her uncle is a former general in the Russian army. The Russian citizenship, residency and Government involvement creates the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet her burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for her. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This Applicant has done.

Disqualifying Condition (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 in, a foreign country) applies in this case.

However, I conclude that Applicant has mitigated the security concerns, thereby demonstrating that it is clearly consistent with national security to grant him the clearance. This decision is based on the following factors: 1) Applicant is a native born United States citizen, who has lived his entire life in the United States. 2) Applicant served seven years in the United States Air Force and received an Honorable Discharge. 3) His wife is a permanent resident of the United States and is now in the process of becoming a United States citizen. 4) Applicant's contact with his mother-in-law and the uncle of his wife is extremely infrequent.

Accordingly, Foreign Influence Mitigating Condition (MC)E2.A2.1.3.1. (A determination that the immediate family member(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) applies to this case. MC E2.A2.1.3.3. also applies because Applicant's contacts with his wife's family in Russia is extremely casual and infrequent.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities.

On balance, it is concluded that Applicant has overcome the Government's information opposing his request for a security clearance. Guideline B is found for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For 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 Applicant.

Martin H. Mogul

Administrative Judge