

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06267

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a communications engineer for a defense contractor. He came to the United States from Bosnia when he was a teenager, earned a college degree, married, and became a United States citizen. He surrendered his Bosnian passport to a United States official and tried to renounce his Bosnian citizenship. His mother and father are citizens of and reside in Bosnia. His father and mother have retired from their positions with the Bosnian government. Applicant has close ties of affection with his parents and has not mitigated security concerns for foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On May 6, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on July 7, 2004. The SOR alleges security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on July 15, 2004, admitting all of the allegations under both Guidelines, but provided an explanation to the allegations. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on February 9, 2005. Applicant received a complete file of relevant material (FORM) on March 24, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He responded on April 21, 2005, and on April 26, 2005, Department Counsel did not object to consideration of the information Applicant provided in his answer to the FORM. The case was assigned to me on May 12, 2005.

FINDINGS OF FACT

Applicant is a 28 year-old senior communications engineer for a defense contractor. He was born in Bosnia/Herzegovina but left the country at the age of 17 in October 1993 during that country's civil war. He lived in Germany with his brother for more than two years and came to the United States in February 1996 to improve his education. He earned a bachelor's degree in computer science at a United States university, and has almost completed academic work for a master's degree in computer science at a United States university. He became a naturalized United States citizen on September 13, 2001, and was issued a United States passport on September 25, 2001. When Applicant completed his security clearance application, he was not married. He is now married but there is no information on his wife's citizenship status. ⁽¹⁾

Applicant stated on his security clearance application that he was a dual citizen of the United States and Bosnia. ⁽²⁾ His statement is based on his belief that Bosnia still considers him a Bosnian citizen and he has never completed any documents to renounce his Bosnian citizenship. Applicant is not aware of any rights or privileges he has as a Bosnian citizen, and does not feel an obligation to support Bosnia. If he is still considered a Bosnian citizen, Applicant is willing to take whatever steps are necessary to renounce Bosnian citizenship. He did contact the Bosnian Embassy in the United States in 2002 to surrender his Bosnian passport and renounce his Bosnian citizenship. However, Embassy personnel did not know the procedures for him to surrender his passport. They were to send him the information to renounce Bosnian citizenship, if needed, but have not yet sent the information. ⁽³⁾

Applicant had a Bosnian passport when he left that country. He renewed the passport on September 20, 2000, after coming to the United State but before becoming a United States citizen and receiving a United States passport. Applicant used his Bosnian passport to travel to Bosnia and Germany before he became a United States citizen. He has not used his Bosnian passport since receiving his United States passport. ⁽⁴⁾ Applicant's Bosnian passport was to expire on September 20, 2005. ⁽⁵⁾ Applicant presented information that Bosnia changed its passport rules and passport form on September 20, 2000, making Applicant's passport no longer valid. ⁽⁶⁾ Since he was not able to return his passport to Bosnian officials, Applicant surrendered his passport to the United States passport agent for the government agency supported by his defense contractor employer. ⁽⁷⁾

Applicant's mother and father are citizens of and reside in Bosnia/Herzegovina. His father was the executive director of a hydroelectric power plant, a Bosnian government-held company. Applicant's father also served as the Bosnian Minister of Telecommunications and Traffic for one year. He then served as a consultant for the main power company in Bosnia until retiring in 2001. His mother was a quality inspector at a power plant but she is now retired. Applicant is close to his parents and communicates with them by video teleconference about three times a month. ⁽⁸⁾

Applicant has a brother who is a citizen of Bosnia/Herzegovina but a student studying and residing in Germany. He is close to his brother. His other brother is a computer technician residing in the United States who became a naturalized United States citizen in September 2002. He communicates with his brother in Germany about twice monthly by video teleconference and twice more monthly by e-mail. Both his brothers served in the Bosnian Army during the War in Bosnia in the late 1980s and early 1990s. ⁽⁹⁾

Applicant visited Bosnia/Herzegovina twice in 1999 using his Bosnian passport because he had not obtained United States Citizenship and did not have a United States passport. He again visited Bosnia/Herzegovina in 2001 after becoming a United States citizen using his United States passport. ⁽¹⁰⁾

Applicant has not served in the Bosnian military, held any political office in Bosnia, or voted in any Bosnian elections. He owns no property nor has any money in Bosnia.

Since the December 1995 signing of the Dayton Peace Accords, there has been significant progress in restoring peace and stability in Bosnia and Herzegovina. There is significant construction in the country and travel and amenities are available. While there are unmarked land mines left from the war, there is relatively little crime. Foreign citizens are rarely the target of any violence. Street crime is relatively low and violent crimes are rare. However, the international

community, including American interests, continue to be targets of occasional threats. Increased efforts to capture people indicted for war crimes resulted in isolated local disruptions and protest. There is an organized crime presence in Bosnia/Herzegovina. There are no reports of Bosnian citizens being targeted and pressured to obtain information from United States citizens. [\(11\)](#)

POLICIES

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." [\(12\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(13\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(14\)](#) An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. [\(15\)](#)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. [\(16\)](#) 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. [\(17\)](#) Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. [\(18\)](#) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." [\(19\)](#) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." [\(20\)](#) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." [\(21\)](#)

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline C - Foreign Preference: A security concern exists when an individual acts in such a way as to indicate a preference for a foreign country over the United States, such that he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Guideline B - Foreign Influence: 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. Contacts with citizens of other countries or financial interest in other countries are also relevant

to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government established its case under Guideline C. Applicant's possession of a Bosnian passport and his statement that he is a dual citizen of the United States and Bosnia/ Herzegovina brings the matter under Foreign Preference Disqualifying Conditions E2.A3.1.2.1 (*the exercise of dual citizenship*); and E2.A3.1.2.2 (*possession and/or use of a foreign passport*). Applicant's possession of a foreign passport is controlled by a memorandum from the Assistance Secretary of Defense for Command, Control, Communications, and Intelligence.⁽²²⁾ This memorandum directs that any security clearance be denied or revoked for an individual with a foreign passport unless the Applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

Applicant has mitigated the security concerns based on foreign preference and the above disqualifying conditions. The Foreign Preference Mitigating Conditions that apply to Applicant are E2.A3.1.3.1 (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*), E2.A3.1.3.2 (*indicators of possible foreign preference occurred before obtaining United States citizenship*), and E2.A3.1.3.4 (*individual has expressed a willingness to renounce dual citizenship*). Applicant's Bosnian citizenship is based solely on his birth in that country. He did not take any affirmative step, after coming to the United States and obtaining United States citizenship, to be a Bosnian citizen. Since become a United States citizen, he has only traveled using his United States passport. He has done more than merely express a willingness to renounce his citizenship with Bosnia. He has contacted Bosnian authorities to determine how to renounce his Bosnian citizenship. The fact the authorities did not know the procedure or provide the needed documents does not take away from Applicant's attempt to renounce the citizenship. Under Bosnian law, his Bosnian passport is no longer valid. However, he surrendered his Bosnian passport to a United States official and he no longer has a Bosnian passport. His surrender of the passport to a United States official meets the requirements of the Money Memorandum. I conclude Applicant has mitigated the security concerns based on foreign preference.

The government established its case under Guideline B. Applicant's mother and father residing in and being citizens of Bosnia/Herzegovina, and his brother, a Bosnian citizen residing in Germany, brings the matter under Foreign Influence Disqualifying Conditions 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*); and E2.A2.1.2.3 (*relatives, co-habitants, or associates who are connected with any foreign government*). An immediate family member includes spouse, father, mother, sons, daughters, brothers, and sisters.⁽²³⁾ Applicant's parents and brother in Germany are immediate family members within the meaning of the disqualifying condition. His brother, a United States citizen residing in the United States, does not meet the definition of an immediate family member and is not a security concern. Applicant's father, as a former government minister and consultant to the power company, was connected with the Bosnian government and may still be. Applicant also expresses his close ties of affection and obligation to his parents and brother. I conclude the above disqualifying conditions have been established as to Applicant's parents and brother in Germany.

The Foreign Influence Mitigating Condition that must be evaluated for Applicant is E2.A2.1.3.1 (*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 involved or the United States*). An agent of a foreign power is defined by statute as a person who acts on behalf of the foreign power in intelligence and terrorist activities.⁽²⁴⁾ Applicant's parents and brother have not acted on behalf of Bosnia in intelligence or terrorist activities. But the DOHA Appeal Board has broadened this term. The Appeal Board did not provide any guidance or rationale to interpret the term, which I am required to follow. The Board stated that "an employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of Foreign Influence Mitigating Condition 1."⁽²⁵⁾ With no further guidance, this

broad definition can only be interpreted to mean there has to be some connection by either employment or agreement between the person and the foreign power. Using this interpretation, I conclude Applicant's brother in Germany is not an agent of the government since he is not employed by the government. He is now a student, and served in the Bosnian Army more than ten years ago during war, and he no longer lives in Bosnia. Applicant's mother would be considered an agent of a foreign power when she was employed by the power company. Applicant's father, as a high-level official and consultant, would definitely be considered an agent of a foreign power. However, with no guidance when such a status ends, I conclude the employment of the mother and father with the government ended when they retired. There is no information that either Applicant's mother or father are now employed by or represent the foreign power. Since their employment with the government has ended, I conclude they are not agents of a foreign power.

Applicant has a heavy burden to demonstrate that the immediate family members in Bosnia/Herzegovina do not pose a security risk because they are not in a position to be exploited by a foreign power forcing Applicant to chose between loyalty to the United States and his family members. (26) While there is no evidence the government or other political factions or groups in Bosnia/Herzegovina has targeted Bosnian citizens to obtain information from citizens of the United States, the federal government does not have to wait until there is specific proof of targeting for there to be a security concern. Applicant has close ties of affection and obligation to his parents and his brother as shown by his video teleconferencing with his parents a few times a month and the number of video conferences and telephone calls to his brother each month. Applicant's brother has been in Germany for a number of years and is a student there. His presence in Germany does not place him in a position to be exploited by a foreign power because Germany is a strong ally of the United States and hosted United States military and civilian personnel for decades. The presence of Applicant's parents in Bosnia does place them in a position where they can be exploited by a foreign power. Applicant's visits to his parents in Bosnia between 1999 and 2001, and his frequent teleconferences with them shows a high level of affection and obligation for his parents. While conditions in Bosnia have improved, there are still lawless factions that could exploit Bosnian citizens for intelligence purposes. In addition, Applicant's father, as a former high-level government official, is clearly susceptible to exploitation by either the government or other groups. Applicant has not met his heavy burden to present probative information that his parents are not susceptible to exploitation and that he could not be forced to chose between loyalty to them and his loyalty to the United States. Applicant has not mitigated the foreign influence security concerns for his parents in Bosnia.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegation set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2, Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: Against Applicant

DECISION

In light of all of the circumstances in the record in this case, it is not clearly consistent with the national interest to grant a security clearance to Applicant, Clearance is denied.

Thomas M. Crean

Administrative Judge

1. FORM, Item 4 (Security clearance application, dated Nov. 29, 2001); Applicant's answer to the FORM (Letter, dated Apr. 21, 2005).
2. FORM, Item 4 (Security clearance application, dated Nov. 29, 2001), question 3.
3. FORM, Item 5 (Applicant's statement, dated Nov. 14, 2002) at 6.
4. *Id.*, at 7.
5. FORM, Item 6 (Applicant's Bosnian passport, dated Sep. 20, 2000).
6. Applicant's answer to the FORM (Exhibit AB 3 to Letter, dated Apr. 21, 2005).
7. *Id.*, Exhibit AB 1.
8. FORM, Item 5 (Applicant's statement, dated Nov. 14, 2002) at 4.
9. *Id.*
10. *Id.* at 1.
11. FORM, Item 7 (Consular information sheet, dated Feb. 9, 2005); Form, Item 8 (Travel Warning, dated, Feb 9, 2005).
12. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
13. Directive ¶ E2.2.1.
14. *Id.*
15. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
16. *See* Exec. Or. 10865 § 7.
17. Directive ¶ E3.1.14.
18. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
19. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
20. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
21. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
22. Form, Item 9 (Money Memorandum, dated Aug. 16, 2000).

23. Directive ¶ E2.A1.1.3.1.

24. 50 United States Code ¶ 1801(b).

25. ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004) at 5.

26. ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002), at 8.