

KEYWORD: Foreign Influence

DIGEST: Applicant is a 41-year-old employee of a defense contractor. He was born in the Former Yugoslavian Republic of Macedonia (FYROM). Applicant and his family immigrated to the United States when he was seven years old and all became naturalized citizens of the United States. His twin daughters are United States citizens. Applicant's wife is a citizen of FYROM who has been granted permanent residency in the United States. His wife's parents are citizen and residents of FYROM. Applicant is presently working for a defense contractor in Kosovo. His wife and two daughters live close to her parents in FYROM to be near him, and he visits them four or five times each week. Applicant's extensive ties to the United States mitigate the security concerns arising from his family ties to FYROM. Clearance is granted.

CASENO: 03-07372.h1

DATE: 09/01/2004

DATE: September 1, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-07372

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 41-year-old employee of a defense contractor. He was born in the Former Yugoslavian Republic of Macedonia (FYROM). Applicant and his family immigrated to the United States when he was seven years old and all became naturalized citizens of the United States. His twin daughters are United States citizens. Applicant's wife is a citizen of FYROM who has been granted permanent residency in the United States. His wife's parents are citizen and residents of FYROM. Applicant is presently working for a defense contractor in Kosovo. His wife and two daughters live close to her parents in FYROM to be near him, and he visits them four or five times each week. Applicant's extensive ties to the United States mitigate the security concerns arising from his family ties to FYROM. Clearance is granted.

**STATEMENT OF THE CASE**

Applicant is an employee of a defense contractor. He submitted a security clearance application on December 13, 2001. Under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 25, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on June 10, 2004. 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 July 22, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM, and provided additional materials for consideration dated August 3, 2004. The case was assigned to me on August 25, 2004.

## FINDINGS OF FACT

Applicant admitted some of the factual allegations in the SOR, specifically ¶¶ 1.a (in part), and 1.b. Item 2, Applicant's Answer to SOR, dated June 10, 2004, at 1-2. Those admissions are incorporated herein as findings of fact. He denied the allegations under SOR ¶¶ 1.c and 1.d. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant was born in FYROM in 1962. Item 4, Security Clearance Application, dated December 13, 2001, at 1. In 1969, when he was about seven years old, Applicant and his family immigrated to the United States seeking political asylum. Item 6, Security Screening Questionnaire, dated August 23, 1999, at 2. Applicant and his family members became naturalized citizens of the United States in 1976. Item 4, *supra*, at 1, 4. Applicant does not claim dual citizenship with any other country; he holds only a United States passport. *Id.* at 1.

Between 1976 and 1999, Applicant lived in the United States. Item 4, *supra*, at 2-3; He attended high school and two years of college in this country. Item 6, *supra* at 10. Additionally, he held several jobs in the United States between 1989 and 1999. Item 4, *supra*, at 2-3.

Applicant's immediate family members became citizens of the United States. His mother, two brothers, and two sisters are still citizens and residents of the United States. *Id.* at 4. Applicant's father passed away in 2003. Item 2, *supra*, at 3. Applicant's family members own no property in FYROM. Additional aterials, Applicant's Statement, dated August 3, 2004. After Applicant's family immigrated to the United States, the government of FYROM demolished his parent's home. *Id.* The government offered to sell them an apartment in compensation, however only citizens of FYROM would be eligible. *Id.* Applicant's parents did not buy the apartment. *Id.* Applicant has no personal knowledge of his parents making contributions to the Kosovo Liberation Army. *Id.*

In 1999, Applicant traveled to FYROM for two weeks and was married there. *Id.* at 3, 6. His wife is a citizen of FYROM. Item 4, *supra*, at 3. In 1999, she was working in FYROM as a translator for a prominent American law association documenting war crimes. Item 6, *supra*, at 1, 2. His wife's parents are citizens and residents of FYROM. Item 2, Answer to Statement of Reasons, dated June 10, 2004, at 3.

In December 2001, Applicant submitted a security clearance application to work for a defense contractor. Item 4, *supra*, at 1. Applicant was then living in the United States. *Id.* Since that time, Applicant accepted a position with another large

defense contractor as an interpreter in Kosovo. Item 5, Summary of Subject Interview, dated February 27, 2003, at 2. Applicant now resides in Kosovo. Item 2, *supra*, at 3. His wife has permanent residency status in the United States, but lives in FYROM with their twin daughters while Applicant works in Kosovo. Additional Materials, Applicant's Statement dated August 3, 2004. Applicant's twin daughters are citizens of the United States. *Id.*; see 8 U.S.C. § 1401(g). Applicant visits his wife and daughters four or five times a week from Kosovo. Item 2, *supra*, at 3. He provides financial support to his wife and daughters, but not to anyone else in FYROM. Item 5, *supra*, at 3.

## POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." 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 a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

**Guideline B Foreign Influence:** A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Directive, ¶ E2.A2.1.1.

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

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 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 pertinent 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. *Id.*

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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "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.

## CONCLUSIONS

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

The Government's documentary matters and Applicant's admissions constitute substantial evidence of a disqualifying condition under Guideline B of the Directive. Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "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."

Paragraph E2.A2.1.3.1. defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers and sisters. Most of Applicant's immediate family members are citizens of and reside in the United States. However, Applicant's spouse and twin daughters live in FYROM to be near Applicant during his work with a defense contractor. Additionally, his parents-in-law reside in FYROM and are persons to whom Applicant has close ties of affection or obligation. Applicant's contacts with these foreign residents are regular and significant.

The substantial evidence is sufficient to raise security concerns under ¶ E2.A2.1.2.1. These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb. 8, 2001).

These security concerns can be mitigated where it is determined that the family members or associates in question are not agents of a foreign power, and they are not 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 and the United States. Directive, ¶ E2.A2.1.3.1. Applicant's wife is a student and her parents are retired school teachers; there is nothing to indicate that any of them are agents of a foreign power. *See* 50 U.S.C.A. § 1801.

In assessing whether relatives are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. The FYROM is a parliamentary democracy whose interests are not inimical to the United States. Item 8, U.S. Department of State Background Note on FYROM, dated June 2004. The FYROM has extensive ties to NATO and the military forces of the United States, and seeks to strengthen those ties. *Id.* Thus, it is not likely that the government would attempt to exploit or pressure its residents to act adversely to our interests.

It is important to consider the vulnerability to duress of Applicant's relatives in FYROM. Applicant's wife is a student and is not employed by a foreign intelligence service or the government. She is not dependent upon an employer in FYROM for income. She has permanent residence status in the United States and would be free to enter the United States if desired. Under these circumstances, the opportunity for adverse influence against Applicant's wife is substantially reduced. As retired school teachers, Applicant's parents-in-law are not especially vulnerable to coercion or duress.

Another significant factor is Applicant's vulnerability to duress. He has extensive ties to the United States, having lived here since 1969. Applicant's mother and siblings all reside in the United States and are naturalized citizens. All his financial interests are in this country. *See* Directive, ¶ E2.A2.1.3.5. Considering the extent of his ties to the United States, it appears Applicant is not unusually vulnerable to duress.

The SOR, ¶ 1.c, asserted that Applicant's parents owned property in FYROM. The allegation was derived from a summary, dated February 27, 2003, of an interview with Applicant on November 21, 2002. Item 5, *supra*, at 3. The summary mentioned a dispute over ownership, and that Applicant's parents may owe some amount of money to the government to satisfy true ownership. In his response to the SOR, Applicant indicated that allegation was not correct.

He stated the government demolished his parent's home after they immigrated to the United States. Additional Materials, *supra*. A government compensation program would have allowed his parents to buy an apartment, but his parents did not do so. *Id*. The statements obviously conflict. I am persuaded that Applicant's own words are more accurate than a post-hoc summary. Therefore, I find the record lacks substantial evidence to support this allegation.

The SOR, ¶ 1.d, asserted that Appellant's parents gave between \$200.00 and \$300.00 to the Kosovo Liberation Army (KLA). The allegation was based upon an interviewer's notes on a security screening questionnaire completed in August 1999. Item 6, *supra*, at 1, 15. The note reflects, "Parents donated 200 or 300 dollars to KLA. Not sure when, or how much. Does not wish to be involved in politics." *Id*. In his response to the SOR, Applicant indicated that his parents never indicated they had made such a contribution, rather it was only a rumor between his brothers and sisters. Additional Materials, *supra*. Applicant doubts it was true because his parents could not have afforded the contribution. *Id*. The factual contention is speculative, therefore I find the record lacks substantial evidence to support this allegation.

Considering all the circumstances in this case, I conclude any potential security concerns arising from Applicant's family ties to FYROM are mitigated by Applicant's extensive ties to and interests in the United States. I conclude Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

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 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 Applicant. Clearance is granted.

**Michael J. Breslin**

**Administrative Judge**