

DATE: February 1, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09492

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate foreign influence security concerns raised by his marriage to a Czech national, personal conduct security concerns raised by his deliberately falsifying his Questionnaire for National Security Position, and criminal conduct concerns raised by his violating 18 U.S.C. § 1001. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 4 May 2004, DOHA issued a Statement of Reasons [\(U\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 18 May 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 19 November 2004. On 20 December 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 29 December 2004.

FINDINGS OF FACT

Applicant is a 36-year-old security receptionist for a defense contractor. In November 1998, he married a native of the Czech Republic who was working as a flight attendant for a U.S. airline. She is now a permanent U.S. resident, but is not sure she will apply for U.S. citizenship. She is trying to get her home base changed from the U.S. to Germany, where she will be closer to her parents and sister who are citizen residents of the Czech Republic. If his wife is able to transfer to Germany, Applicant intends to go with her. Tr. 13, 18. They may eventually move to the Czech Republic. Answer. Applicant traveled to the Czech Republic in 1998, 2000, 2001, 2002, and 2004 to visit his wife's family. Applicant's father-in-law used to be a lawyer, but is now training for a position dealing with real estate. Tr. 20. Applicant's mother-in-law is not working outside the home at this time. Applicant's sister-in-law recently married and is at home taking care of her child. Before, she worked in a supermarket. Applicant's wife talks with her parents a few

times a month via telephone. Tr. 21.

In December 1993, Applicant was arrested for driving while intoxicated (DWI). He went to court, was convicted of DWI, and sentenced to suspension of his driver's license for 30 days, a fine, and to attend an alcohol/substance abuse program. Ex. 3 at 3-4. In August 1995, Applicant was again arrested and charged with DWI. He pled guilty and was sentenced to jail for 180 days, with 175 days suspended, a fine, and suspension of his driving privileges.

In June 1996, Applicant was arrested and charged with reckless driving (in excess of 100 miles per hour). Applicant pled guilty and was sentenced to jail for five days with two days suspended. On 21 October 2001, Applicant was arrested for the felony of willfully and wantonly disregarding the signal of a law enforcement officer to stop his motor vehicle and thus interfering with or endangering the operation of the law-enforcement vehicle or endangering the officer. Ex. 7. He was also charged with the misdemeanor of driving a motor vehicle recklessly or at a high rate of speed such as to endanger the life, limb, or property of others. Ex. 9. The felony charge was nolle prossed. Ex. 8. Applicant pled guilty to the misdemeanor and was sentenced to jail for 180 days with 170 days suspended and had his driver's license suspended for six months. Ex. 10.

Applicant completed a questionnaire for national security position (QNSP) on 10 February 2002, certifying it was true, complete, and correct" to the best of his knowledge and belief, and acknowledging that "a knowing and willful false statement on this form can be punished by fine or imprisonment or both" under 18 U.S.C. § 1001. Ex. 1 at 9. Question 27(c) asked if, in the previous seven years, Applicant had a lien placed against his property for failing to pay taxes or other debts. Question 27(d) asked if, in the previous seven years, Applicant had any judgments against him that had not been paid. ⁽²⁾ Applicant answered "no" to both questions. *Id.*

Applicant had two state tax liens filed against him: one filed in January 1996 for \$679 was released in March 2000; the other, filed in June 1999 for \$1,414, was released in June 1999. A judgment was filed against Applicant in April 2000 for \$1,243 and was settled in January 2001.

Question 23(a) asked if Applicant had ever been charged with or convicted of any felony offense. Applicant answered "no." Question 23(d) asked if Applicant had ever been charged with or convicted of any offense related to alcohol or drugs. ⁽³⁾ Applicant answered "yes," and listed only a DWI offense from December 1993. Ex. 1 at 7. Question 23(f) asked if, the previous seven years, Applicant had been arrested for, charged with, or convicted of any offenses not listed previously. Applicant answered "no." *Id.*

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

CONCLUSIONS

Guideline B--Foreign Influence

In the SOR, DOHA alleged Applicant's wife is a citizen of the Czech Republic (¶ 1.a), his wife does not intend to become a U.S. citizen (¶ 1.b), he and his wife may move to the Czech Republic (¶ 1.c), his wife's mother, father, and sister are citizen residents of the Czech Republic (¶ 1.d), and he traveled to the Czech Republic in 1998, 2000, 2001, and 2002 (¶ 1.e). A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. 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.

The Government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B--Applicant's wife is a citizen of a foreign country--the Czech Republic--as are her parents and sister who also reside there. DC E2.A2.1.2.1. There is a rebuttable presumption an applicant has ties of affection for, or obligation to, his wife's immediate family (father, mother, and sister). ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002).

The security concerns raised by Applicant's foreign associates may be mitigated if the foreign associates are not agents of a foreign power and 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 loyalty to the U.S. C E2.A2.1.3.1. Applicant's foreign associates are not "agents of a foreign power." *See* 50 U.S.C. § 1801(b).

In assessing the vulnerability to exploitation of Applicant's foreign associates, it is often helpful to consider the character of the government and the status of the country involved. Although Guideline B does not differentiate between friendly and hostile nations, it is appropriate to consider the character of the government when determining whether the foreign associates are in a position of vulnerability. Neither party presented any evidence on this issue.

The Czech Republic is an independent parliamentary republic established on 1 January 1993. It has made a significant contribution to the war on terrorism and has supported U.S. military deployments to both Afghanistan and Iraq. The Czech Republic became a member of the North Atlantic Treaty Organization on 12 arch 1999 and the European Union on 1 May 2004. *See* U.S. Department of State Background Note: Czech Republic (updated December 2004). After considering all of the evidence, I am convinced Applicant's foreign associates are not in a position to be exploited by a foreign power. MC E2.A2.1.3.1. applies. I find for Applicant on ¶ 1.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant falsified his QNSP⁽⁴⁾ by denying he had any unpaid judgments pending against him (¶ 2.a), failed to list all of his alcohol related offenses (¶ 2.b), and failed to disclose other offenses for which he had been arrested, charged or convicted (¶ 2.c). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence that Applicant had a judgment against him. Ex. 11 at 2. But the same document shows Applicant satisfied the judgment in January 2001, well before he submitted his QNSP. The Government concedes Applicant paid the judgment referenced in ¶ 2.a. Tr. 6-7. Thus, there is no falsification. I find for Applicant on ¶ 2.a.

The Government also established Applicant listed a 1993 DWI arrest and conviction, but failed to list his 1995 DWI conviction in answer to question 23(d) on his QNSP. The Government also established that in answer to question 23(f) on his QNSP, Applicant failed to note that he had been arrested and charged with disregarding the signal of a law enforcement officer to stop his motor vehicle and reckless driving. The question is whether Applicant deliberately falsified his answers to those questions.

Applicant denies deliberately falsifying his answers or trying to mislead security investigators. In large measure, my decision hinges on my assessment of Applicant's credibility. In determining his credibility, I considered his testimony and demeanor, as well as all the evidence of record. The record included evidence that, in answer to question 27(c)

Applicant denied having any liens placed against him in the previous seven years, when in fact he had two such liens. Furthermore, he claimed never to have been charged with or convicted of any felony in question 23(a), when in fact, he was charged with the felony of disregarding a law enforcement officer's signal to stop and thus endangering the law enforcement officer's vehicle and person. Applicant is not credible.

The Government's evidence constitutes substantial evidence of a potentially disqualifying condition under Guideline E--the deliberate omission or falsification of relevant and material facts from a personal security questionnaire. DC E2.A5.1.2.2. An applicant's criminal offenses, including alcohol-related offenses, are relevant and material to a determination of an applicant's security worthiness. None of the listed mitigating conditions apply. I find against him on ¶¶ 2.b and 2.c.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by omitting relevant and material information from his QNSP (¶ 3.a). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. Applicant deliberately lied in the signed, sworn statement he completed for a DSS agent for the purpose of obtaining a security clearance. An applicant may be disqualified if allegations of criminal conduct are raised against him regardless of whether he was formally charged (DC E2.A10.1.2.1) and the offense--a violation of 18 U.S.C. § 1001--is a serious one (DC E2.A10.1.2.2). None of the mitigating conditions apply. Although DOHA alleged only one offense under Guideline J, his other criminal offenses (such as his two DWIs and reckless driving) persuade me that his criminal conduct was not an isolated incident. I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Subparagraph 1.e: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

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

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 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 (Directive).
2. The SOR alleged this was question 37. *See* Ex. 2.
3. The SOR alleged this was question 24. *See* Ex. 2.
4. The allegations in SOR ¶ 2 appear to be based on the questions in the electronic version of the security clearance application (SCA). Applicant never signed that document. Instead, he completed a hand-written Questionnaire for National Security Positions. The questions on the QNSP are not numbered the same as those on the electronic SCA nor are they worded exactly the same. My discussion and conclusions are based on the document Applicant signed, not the electronic SCA.