

DATE: December 9, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12373

ECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

James S. Delsordo, Esq.

SYNOPSIS

Applicant is a 74-year-old distinguished attorney recently recognized for 50 years of legal practice. At various times over the past 30 years he provided legal representation to the Serbian Orthodox Church, of which the Crown Prince of Serbia is a member. Applicant met the Crown Prince on those occasions, and became friendly to him. Applicant, along with several hundred other distinguished people from around the world, was invited last year to attend the Crown Prince's birthday party in Belgrade, Serbia. Applicant has mitigated whatever foreign influence security concerns might exist from his legal representation of the Serbian Orthodox Church in the United States and subsequent relationship with the Crown Prince from that business arrangement. There is no security concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 4, 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on May 10, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on June 25, 2004. On June 30, 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. The Government and the Applicant submitted exhibits that were admitted into evidence. The Applicant testified and waived the 15 day notice period. DOHA received the hearing transcript (Tr.) on July 9, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is a 74-year-old attorney who recently received his 50 year pin from his state bar association for practicing law for that period of time. Applicant graduated from law school in 1954. Applicant is a partner in a law firm, and has been a partner in law firms during his law career. Applicant's father was born in Croatia when it was part of the Austro-Hungarian Empire. His mother was of Serbian heritage. (Tr. 16, 28, 29; Exhibits 1 and A)

Applicant did legal work for the Crown Prince of Serbia several years ago, but has no business relationship with that Crown Prince at the present time. Applicant represented the Serbian Orthodox Church in a controversy regarding the return of the remains of the late King of Yugoslavia from the United States, where he is buried, to England. He also represented the Royal Family nearly 20 years ago on a condominium sale. He represents a Serbian charity in which the Crown Princess has a charitable interest. Neither Applicant nor his law firm represent that charity any longer. In 2003, at the Crown Prince's invitation, Applicant attended the Crown Prince's birthday party in Belgrade, Serbia. Several hundred people, including various ambassadors, also attended the reception. Applicant has known the Crown Prince since the 1960's, and he has represented the Serbian Orthodox Churches in Applicant's hometown. The late King of Serbia was the head of the Serbian Orthodox Church, ex officio, and Applicant is a member of that church. When the Crown Prince came to the United States he was a guest of the church and Applicant visited with him at those functions. Applicant visited the Crown Prince twice in the past 30 years while traveling in Europe. (Tr. 13, 18 to 25, 35)

Serbia today is an independent constitutional republic located in the Balkans and is not a monarchy. The Crown Prince is not a governmental official of that country. The Serbian monarchy was abolished after World War II and the Crown Prince and his father, King Peter II, went into exile. The King lived in exile from 1941 for many years in London, England. After the collapse of the Communist government and break-up of Yugoslavia in 1989, the Crown Prince (King Peter died years ago) returned for several visits to Serbia and Belgrade, the capital of Serbia, but does not reside there permanently. The current Serbian Government returned to the Crown Prince a royal palace and his Serbian citizenship, so he can visit and stay there now and in the future. The Crown Prince actually lives in London, England, most of the year. The Crown Prince is the godson of Queen Elizabeth II of Great Britain. (Tr. 19, 23, 24, 26, 27; Exhibit 3)

Applicant had a security clearance from 1991 to 2000, when it was put on inactive status. Applicant has never been asked by the Crown Prince or other person about classified information. (Tr. 17, 23, 25, 27)

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 restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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

GUIDELINE B: Foreign Influence

Conditions that could raise a security concern and may be disqualifying include:

- (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.
- (2) Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

Conditions that could mitigate security concerns include:

- (1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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.

CONCLUSIONS

The Government proved Applicant represented the Serbian Orthodox Church in the metropolitan area in which Applicant lives. This relation was of attorney and client. Any contact Applicant had with the Crown Prince of Serbia was within the context of that legal representation. Involvement with a charity favored by the current Serbian Crown Princess seemed to be more on a voluntary basis rather than for compensation, and in any case, that relationship has now ceased. Any direct personal contacts were infrequent over the past 30 years. The Government failed to establish Applicant's association with the Crown Prince was a matter of affection or obligation as stated in Disqualifying Condition (DC) 1 or that the Crown Prince was connected to a foreign government (DC 2). In short, there is no security concern here under Guideline B. Therefore, there are no DC to apply. With no DC to apply, there are no Mitigating

Conditions to apply also. Therefore, I conclude this guideline for 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

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.

Philip S. Howe

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).