

KEYWORD: Foreign Influence; Criminal Conduct

DIGEST: Applicant is an honest, hardworking native born United States citizen. Her husband's Mexican citizenship does not leave her in a position to be exploited. Clearance is granted.

CASENO: 03-14347.h1

DATE: 03/11/2005

DATE: March 11, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-14347

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

Richard B. Bracken, Esq.

## **SYNOPSIS**

Applicant is an honest, hardworking native born United States citizen. Her husband's Mexican citizenship does not leave her in a position to be exploited. Clearance is granted.

## **STATEMENT OF THE CASE**

On April 23, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on June 17, 2004. The case was assigned to me on August 25, 2004. A Notice of Hearing was issued on January 5, 2005, and the hearing was held on February 3, 2005. The transcript was received on February 15, 2005.

## **FINDINGS OF FACT**

Applicant is 42 years of age. She is employed by a defense contractor, and has held a security clearance since 1985.

Applicant was born in the United States. She met her husband, a citizen of Mexico living illegally in the United States since he was a teenager, in 1980. She started dating him in 1982. During the time she was dating him through the time they were married in 1986, she had no knowledge of his immigration status. In 1987, she finally discovered he was in the United States illegally when they filed their tax return and the social security number he used came back as invalid. They then began the process of obtaining legal status for him, but despite numerous attempts between the late 1980s and 2004, they were unsuccessful. Finally, in April 2004, he obtained a work permit, which legalized his presence in the United States. According to applicant, her husband hopes to become a permanent resident and then a United States citizen because they "have four children that [they] are raising, and it would benefit the whole family if he is, you know,

became a [United States] citizen" (TR at 39). Applicant's husband authored a letter in which he stated, "someday I would like to serve this country and take the precious oath of becoming a proud American" (Exhibit H). All four of their children were born in the United States.

Applicant's husband has nine siblings, all of whom are citizens and residents of Mexico. To applicant's knowledge, none of the siblings works for the Mexican government. None of them has any idea where applicant works or what she does for a living. Applicant and her husband talk with the siblings about twice a year.

Applicant's supervisor appeared at the hearing and testified applicant is an outstanding employee. One of applicant's former supervisors also appeared at the hearing. He testified that applicant has always been candid and forthright with him.

### CONCLUSIONS

Applicant was born in the United States. In 1986, she married a Mexican citizen who, unbeknownst to her, had been living illegally in the United States since he was a teenager. When applicant found out about her husband's illegal status in 1987, she began a multi-year effort to legalize his presence in the United States. This effort paid off in April 2004 when he received a permit to work in the United States. Although not alleged in the SOR, the Government argues that applicant engaged in illegal conduct by harboring her husband in the United States prior to April 2004 in violation of 8 U.S.C. 1324. [\(1\)](#) Although a good-faith argument could be made that applicant violated 8 U.S.C. 1324, [\(2\)](#) based on the facts of this case, particularly the fact that applicant's husband was living illegally in the United States long before he married applicant, I conclude that her conduct did not violate 8 U.S.C. 1324. [\(3\)](#)

With respect to Guideline B, the fact that applicant's husband is a citizen of Mexico requires application of Disqualifying Condition 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 of or present in, a foreign country*). Based on the evidence presented, I conclude that applicant's husband is not an agent of Mexico, or in a position to be exploited by Mexico in a way that could force applicant to choose between loyalty to him and loyalty to the United States. Accordingly, Mitigating Condition 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*) is applicable to this case.

Based on the foregoing, and on my conclusion that applicant is an honest, hardworking, loyal native born United States citizen, I conclude that it is clearly consistent with the national interest for her to have access to classified information.

## **FORMAL FINDINGS**

GUIDELINE B: FOR THE APPLICANT

GUIDELINE J: FOR THE 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.

Joseph Testan

Administrative Judge

1. The SOR simply alleged that *applicant* engaged in criminal conduct because *her husband* is a citizen of Mexico currently residing illegally in the United States.
2. *See, United States v. De Evans*, 531 F.2d 428 (9<sup>th</sup> Cir. 1976)
3. Applicant's counsel's argument that to violate 8 U.S.C.1324 an individual must both bring in **and** harbor an illegal alien is completely without merit.