

KEYWORD: Foreign Influence

DIGEST: Applicant, a 67-year-old retired Air Force officer and defense contractor, successfully mitigated concerns relating to foreign influence occasioned by his 2003 marriage to a Russian citizen who had been a judge in Russia. She still has elderly parents and one brother in Russia. Applicant has held a security clearance for over 40 years and was held as a prisoner of war in Laos where he was tortured in an unsuccessful effort to extract information from him. Clearance is granted.

CASENO: 03-18349.h1

DATE: 07/15/2005

DATE: July 15, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18349

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Leslie McAdoo, Esq.

**SYNOPSIS**

Applicant, a 67-year-old retired Air Force officer and defense contractor, successfully mitigated concerns relating to foreign influence occasioned by his 2003 marriage to a Russian citizen who had been a judge in Russia. She still has elderly parents and one brother in Russia. Applicant has held a security clearance for over 40 years and was held as a prisoner of war in Laos where he was tortured in an unsuccessful effort to extract information from him. Clearance is granted.

**STATEMENT OF THE CASE**

On October 15, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated November 4, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on February 10, 2005, and a Notice of Hearing was issued April 1, 2005, for a hearing on May 5, 2005. Because of the unavailability of a witness the hearing was postponed until May 25, 2005. The Government introduced three exhibits at the hearing, and the Applicant introduced 18. All were accepted into evidence. The Applicant and his wife testified on his behalf. The transcript was received on June 3, 2005.

## FINDINGS OF FACT

Applicant admitted all of the factual allegations with explanatory information. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 67-year-old analyst with a major defense contractor. He is a graduate of the U.S. Military Academy who served 20 years in the Air Force and has held a security clearance for 43 years since 1962. He served in Viet Nam and was taken prisoner while on a mission to Laos and held captive there for six months. He was confined in a small pit by the Chinese (PRC) who were working in Laos with the North Vietnamese government. He was tortured by his captors in an unsuccessful effort to extract information from him. He still bears scars on his body from his experience. He escaped from custody and, after his retirement from the Air Force in 1982 has worked in the defense industry for several defense contractors.

After corresponding with several other foreign nationals, Applicant began corresponding through an international dating service with his present wife in October 2001. She was then living in Russia where she was educated as a lawyer and had been a judge in a mid-size city for six years. He traveled to Russia four times in 2001 and 2002 to become acquainted with her and eventually to marry her and return with her to the U.S. in 2003. She is now a permanent resident and plans to formally apply for citizenship in December, 2005 (Exh. E).

Applicant advised his corporate security office of his proposed trips to Russia, sought guidance on marriage to a foreign national (Exh. B). He was advised orally that the government had no problem with the marriage. He also has a relationship with another government agency which sent someone to accompany him in Russia on his trips in preparation for marrying his wife and bringing her to the U.S.

Applicant's wife's parents and her brother and his family still live in a mid-size city in Russia. Applicant's wife had a small financial interest in an apartment in the city where she lived that she has transferred to her family. During the summer of 2004, Applicant and his wife sponsored her brother's teenage daughter for a vacation in the U.S., and she

stayed with them.

Applicant has very little contact with his wife's family since they speak no English and he speaks no Russian. Her father was a music teacher and her mother was a nurse. Both are retired. Their respective ages are 76 and 72. Her brother is a clerk at a police station. Applicant's wife has telephone contact with her parents once a month and sends no money to them except occasional holiday presents. Her mother visited Applicant and his wife in the U.S for a brief visit in 2004. Applicant advised his security office of the visits of both his mother-in-law and his niece (Exhs. C and D). His wife has no immediate plans to visit Russia but might visit her parents at some future time. She has completely acclimated to U.S. culture and has little interest in her country of origin.

Applicant has a net worth of approximately \$1.5 million. He is active in the U.S. Power Squadron where he is an officer in the east coast chapter. That private group supports guarding the coastal waters of the U.S. working with the U.S. Coast Guard. His wife is also active in the group and helps with their social activities.

Applicant's reputation for honesty and his ability to safeguard classified information are both superb. Statements from present and former supervisors of Applicant and his attention to security requirements speak well for his ability to fulfill those responsibilities and of his total loyalty to the United States in all circumstances (Exhs. F, G, and H).

## 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b).

"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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

## CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable guideline concerning foreign influence (Guideline B) provides as a disqualifying condition (DC) that a security risk may exist when an individual's family and foreign associates to whom she has close ties of affection or obligation are not citizens of the United States or may be subject to duress. (E2.A2.1.1.) Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the family members and associates 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 persons involved and the U.S. (E2.A2.1.3.1.), or that foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. (E2.A2.1.3.5.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant is a seasoned professional. His entire life has been spent in the service of his country from his college years at West Point, through his military active duty and his tour of duty in Viet Nam and Laos when he was imprisoned, to his present responsible position with a major government contractor. His action in seeking and obtaining a wife from abroad was taken deliberately and with care as he advised his employer's security office of his travels to Russia, intent to wed a foreign national, and visits from abroad from his wife's relatives.

His wife is a mature well-educated person who has taken a new life in the U.S. and left behind her interests with her birth country. Her parents are retired teachers who do not live in the center of political activity or have any governmental connections. Her brother, while working in a government police office, is a minor functionary and not in a critical government position.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant's entire life history reflects not only his service to his country, his ability to protect classified information, but also his ability to withstand pressure from those who attempted to have him compromise classified information. While the present facts and circumstances are different from those he encountered in Laos, the fact that he did not yield to pressure then under much more adverse circumstances leads me to conclude that he would not do so now.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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**

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge