

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: After becoming a U.S. citizen in 1998, and obtaining a U.S. passport in 1998, Applicant acquired a Federal Republic of Yugoslavia passport in 2000 and used it for approximately five years to travel to Yugoslavia and its successor state Serbia and Montenegro to visit her parents, mother-in-law, and brother, all of whom are citizens and residents of Serbia and Montenegro. Applicant failed to mitigate security concerns under Guidelines C and B of the Directive. Clearance is denied.

CASENO: 04.09669.h1

DATE: 04/06/2006

DATE: April 6, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09669

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

After becoming a U.S. citizen in 1998, and obtaining a U.S. passport in 1998, Applicant acquired a Federal Republic of Yugoslavia passport in 2000 and used it for approximately five years to travel to Yugoslavia and its successor state Serbia and Montenegro to visit her parents, mother-in-law, and brother, all of whom are citizens and residents of Serbia and Montenegro. Applicant failed to mitigate security concerns under Guidelines C and B of the Directive. 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 May 16, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing June 4, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on August 15, 2005. I convened a hearing on November 2, 2005, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced three exhibits, and offered four documents for administrative notice. Applicant called two witnesses and introduced three exhibits (Ex.), which were identified as Ex. A through C. The Government's exhibits (Ex.) were numbered 1 through 3 and its documents offered for administrative notice were numbered I through IV. All exhibits marked and identified as evidence were admitted into evidence without objection. At the conclusion of the hearing, I agreed to hold the record open until close of business November 14, 2005, so that Applicant could, if she wished, submit additional documentation related to her return of her Yugoslav passport to the cognizant officials at the embassy of Serbia and Montenegro. On November 14, 2005, Applicant filed a communication discussing her attempts to provide documentation supporting her return of her passport to the embassy of Serbia and Montenegro. Applicant's submission was identified as Ex. D and admitted to the record without objection. DOHA received the transcript (Tr.) of the proceeding November 17, 2005.

On December 8, 2005, Applicant provided Department Counsel with a list of transcription errors she found in the hearing transcript. Without objection, Department Counsel forwarded the list of errors to me. I have reviewed Applicant's list of transcription errors and have given it due consideration.

At Applicant's request, the transcript was reviewed for errors by the court reporting company. A transcript, identified as proofread and a verbatim report of the November 2, 2005, hearing, was issued December 15, 2005, by the court reporting company. DOHA received a copy of the reviewed and corrected transcript on January 11, 2006. Subsequently, it was brought to the attention of the court reporting company that Applicant's surname was misspelled throughout the document. On April 5, 2006, the court reporting company provided DOHA with a transcript showing Applicant's surname spelled correctly.

FINDINGS OF FACT

The SOR contains four allegations of disqualifying conduct under Guideline C, Foreign Preference, and four allegations of disqualifying conduct under Guideline B, Foreign Influence. In her answer to the SOR, Applicant admitted all eight allegations. Applicant's admissions are incorporated as findings of fact.

Applicant is 43 years old and has been employed since 1993 by a federal contractor. Her job title is senior architect program manager. She is married and the mother of two daughters. (Ex. 1; Ex. 2; Tr. 43.)

Applicant and her husband were born in the former Republic of Yugoslavia, which is now known as Serbia and Montenegro. After completing her studies in electrical engineering in the former Yugoslavia, Applicant was employed there as an engineer from 1988 to 1990. (Ex. 1.) Applicant's husband immigrated to the U.S. in 1987, and she immigrated to the U.S. in 1990. They were married in the U.S. and became naturalized U.S. citizens in March 1998. In April 1998, Applicant obtained a U.S. passport. (Tr. 45-46.)

Applicant's mother, father, brother, and mother-in-law are citizens and residents of Serbia and Montenegro. Applicant's father is 70 years old and a retired mechanical engineer. Her mother is 68 years old and a retired physical chemist. Both parents receive retirement benefits from Serbia and Montenegro which they accrued as a result of their employment. (Tr. 55; 68-70.) They live on a small family farm which Applicant's mother inherited, in part, from her father. (Tr. 65-67.) Applicant's parents have U.S. permanent resident status. In the past ten years, Applicant's parents have visited her in the U.S. approximately once a year. (Tr. 54-55.) Because of health concerns, they no longer travel to the U.S. every year. (Tr. 30.)

Applicant's brother is 39 years old and unemployed. His wife is a teacher. Applicant's parents contribute to the support of the brother, who has health problems and underwent open heart surgery in March 2004. Applicant's brother and his wife visited Applicant and her family in the U.S. approximately four or five years ago. (Tr. 58.) Applicant's mother-in-law is 72 years of age and a retired bank clerk. Applicant's father-in-law died in 1990. (Answer to SOR; Tr. 31; 53.)

Applicant and her husband are close to their family members in Serbia and Montenegro and solicitous of their well-being. Applicant speaks with her parents on the telephone once a week. Applicant's husband also speaks with his mother on the telephone once a week. (Tr. 29; 52.) Applicant speaks on the telephone with her brother approximately every two months. (Tr. 57.) In 2004, when she learned of her brother's open heart surgery, Applicant flew to Serbia and Montenegro to be with him and her parents. (Tr. 49; 56-57.) Applicant usually travels to Serbia and Montenegro to visit her parents once a year. She traveled to Serbia and Montenegro twice in 2004 and twice in 2005 to visit her family members. In 2005, she sent her younger daughter to visit her grandparents in Serbia and Montenegro for two months. (Tr. 30.)

Applicant completed a security clearance application (SF-86) in May 2003. Question 15 on the SF-86 reads as follows: "**Your Foreign Activities - Passport** In the last 7 years, have you had an active passport that was issued by a foreign government?"

Applicant answered "yes" and indicated she had obtained a passport in June 2000 from Yugoslavia. (Ex. 1 at 4.) She offered the following explanation for obtaining the passport, which was scheduled to expire in June 2010:

I have close family in Yugoslavia (mother, father, and brother) and I travel there at least once a year, so I [prefer] not to have to get visa to enter Yugoslavia, especially if I need to travel there for family emergency (illness).

In a signed, sworn statement made in the presence of a special agent of the Defense Security Service on June 8, 2004, Applicant acknowledged her most recent use of her Yugoslav passport to enter Serbia and Montenegro occurred in March 2004. She denied that her use of the passport of Yugoslavia indicated she exercised dual citizenship. She stated her loyalty was solely to the United States, and she observed that during the previous ten years the Yugoslav diplomatic offices in the U.S. had been closed as a result of United Nations sanctions and political situations. She stated she used the Yugoslav passport approximately two or three times to avoid the difficulties and inconvenience of obtaining a visa to enter Serbia and Montenegro. She said she would relinquish the Yugoslav passport as soon as she researched the procedure for turning it back to the government of Serbia and Montenegro. (Ex. 2 at 1-2.)

At her hearing, Applicant presented a certified mail receipt, dated October 10, 2005, addressed to the embassy of Serbia and Montenegro, and a U.S. postal service tracking record for the package as evidence she had returned her Yugoslav

passport to the embassy by U.S. mail. (Ex. B and C.) In her post-hearing submission, Applicant reported the U.S. Post Office tracking service was unable to provide her with documentation showing her passport had been received by the embassy of Serbia and Montenegro. The Post Office advised Applicant to file a claim that the passport had been lost. Applicant received no direct reply from the embassy on the status of her passport. (Ex. D.)

Applicant has been employed by the same government contracting company for twelve years. Her leadership potential has been recognized and she has been selected for a program to develop her leadership abilities. (Tr. 38-39.) Applicant's direct supervisor and a co-worker testified as character witnesses for Applicant. Her supervisor stated Applicant was the best person in the office under his supervision. He said he trusted her completely. Applicant's co-worker called her "a rare individual" and said he would trust her with the lives of his wife and children. (Tr. 74-82.)

I take administrative notice that in the spring of 1999 the North Atlantic Treaty Organization (NATO) and the Federal Republic of Yugoslavia were at war. The U.S. and the Federal Republic of Yugoslavia severed diplomatic relations. In November 2000 the U.S. reestablished a diplomatic presence in the Federal Republic of Yugoslavia and the U.S. embassy in Belgrade reopened in May 2001. The embassy of Serbia and Montenegro in Washington and the U.S. embassy in Belgrade have reestablished bilateral relations and provide a full range of consular services. ("Background Note: Serbia and Montenegro," U.S. Department of State, Bureau of European and Eurasian Affairs, December 2004, at 10: Government Document I for Administrative Notice.) A U.S. citizen traveling with a tourist, official, or diplomatic passport is not required to obtain a visa to enter Serbia and Montenegro if he or she plans to stay for fewer than 90 days. (U.S. Department of State, Consular Information Sheet: Serbia and Montenegro (Former Yugoslavia, Federal Republic of), current as of August 4, 2005, at 1: Government Document II for Administrative Notice.)

I also take administrative notice that while threats to U.S. citizens in Serbia and Montenegro are not common, a violent demonstration in May 2004 resulted in damage and closure of the U.S. embassy in Belgrade. While the post-Milosevic government has established measures to improve the the country's global economic situation, unemployment and poverty remain day-to-day concerns of many citizens and residents of Serbia and Montenegro. In October 2004, 31.7% of the workforce was unemployed. According to a World Bank estimate, 10% of the population of Serbia and Montenegro is below the poverty line, which is defined as an income of approximately 60 Euros or 73 U.S. Dollars a month. Additionally, there are long-standing connections between organized crime and political power in Serbia. Close ties exist between top government officials, officers in the military and security agencies, and organized crime. Serbia's governmental corruption and continuing economic problems raise security concerns for the U.S. ("Serbia and Montenegro: Current Situation and U.S. Policy," updated February 7, 2005, Congressional Research Service Report for Congress at 2-3; 10-11: Government Document IV for Administrative Notice.)

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.

In addition to the guidelines in the Directive, official DoD policy guidance must also be considered. Of particular relevance in this case is an August 16, 2000, memorandum from Assistant Secretary of Defense Arthur L. Money (Money Memorandum) clarifying the application of Guideline C, Foreign Preference, to cases involving an applicant's possession or use of a foreign passport.

Enclosure 2 of the Directive sets forth personal 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.

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).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline C - Foreign Preference

In the SOR, DOHA alleged, and Applicant admitted, that she exercised dual citizenship with the country formerly known as the Federal Republic of Yugoslavia, now known as Serbia and Montenegro, and the United States (§ 1.a.); that she applied for and was issued a passport from the country formerly known as the Federal Republic of Yugoslavia on June 8, 2000, even though she became a naturalized U.S. citizen on March 25, 1998 and had a valid U.S. passport issued on April 8, 1998 (§ 1.b.); that, as of June 3, 2004, when interviewed by an authorized investigator for the Department of Defense, she possessed a Federal Republic of Yugoslavia passport that was issued June 8, 2000 and which will not expire until June 8, 2010 (§ 1.c.); and that Applicant used her Yugoslav passport instead of her U.S. passport to enter and exit Serbia and Montenegro (§ 1.d.).

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States.

Applicant's admitted conduct raises security concerns under Disqualifying Conditions (DC) E2.A3.1.2.1. and E2.A3.1.2.2. of Guideline C. After obtaining U.S. citizenship and acquiring a U.S. passport, Applicant obtained a Federal Republic of Yugoslavia passport and possessed and used it for approximately five years to enter and exit the former Yugoslavia and its successor nation Serbia and Montenegro.

We turn to an examination of applicable mitigating conditions under Guideline C that pertain to the exercise of dual citizenship. An applicant may mitigate DC E2.A3.1.2.1 under Guideline C if she shows her dual citizenship is based solely on her parents' citizenship or birth in a foreign country. Mitigating Condition (MC) E2.A3.1.3.1. Applicant's dual citizenship with Serbia and Montenegro and the United States was not based on her parents' citizenship or birth in a foreign country. Thus MC E2.A3.3.1 is inapplicable.

An applicant can mitigate an indicator of possible foreign preference if it occurred before obtaining U.S. citizenship (MC E2.A3.1.3.2.). While Applicant's expression of preference for Yugoslav citizenship occurred before becoming a U.S. citizen, that expression continued after becoming a naturalized U.S. citizen and after obtaining a U.S. passport. Accordingly, MC E2.A3.1.3.2. does not apply to Applicant's case.

Under MC E2.A3.1.3.4., an applicant can also mitigate the exercise of dual citizenship by expressing a willingness to renounce dual citizenship. At her hearing, Applicant expressed a preference for the U.S. and stated a willingness to renounce dual citizenship. Accordingly, MC E2.A3.1.3.4. applies to Applicant's exercise of dual citizenship.

Possession and use of a foreign passport may be a disqualifying condition under § E2.A.3.1.2.2. of Guideline C. In a

memorandum (Money Memo), dated August 16, 2000, Assistant Secretary of Defense Arthur L. Money stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government.

Applicant presented no evidence that she had been granted approval by the U.S. government to possess and use her Federal Republic of Yugoslavia passport. (See also MC E2.A3.1.3.3.) She was unsuccessful in surrendering her Federal Republic of Yugoslavia passport to responsible authorities at the embassy of Serbia and Montenegro and was advised by the U.S. Postal Service to report the loss of her Yugoslav passport. Accordingly, Applicant is precluded from receiving a security clearance under the policy guidance of the Money Memo. The allegations at 1.a., 1.b., 1.c., and 1.d. of the SOR are concluded against the Applicant.

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's parents, are citizens and residents of Serbia and Montenegro and registered U.S. aliens (§ 2.a.); that Applicant's brother is a citizen and resident of Serbia and Montenegro (§ 2.b.); that Applicant's mother-in-law is a citizen and resident of Serbia and Montenegro and a registered U.S. alien (§ 2.c.); and that Applicant traveled to Serbia and Montenegro in 2004, 2003, 2002, 2001, 2000, 1997, and 1996. (§ 2.d.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that several factors---economic instability, high unemployment, poverty, political corruption and ties to organized crime---combine in Serbia and Montenegro to create an unstable climate that threatens U.S. security interests. American citizens with immediate family members who are citizens or residents of Serbia and Montenegro could be vulnerable to coercion, exploitation, or pressure.

Applicant admits her parents, brother, and mother-in-law are citizens and residents of Serbia and Montenegro. Her admissions raise a security concern under Guideline B, DC E2.A2.1.2.1. Applicant is emotionally close to her parents and her brother. She speaks on the telephone with her parents weekly. Her husband communicates with Applicant's mother-in-law weekly as well. While Applicant communicates less often with her brother, she is a close and supportive sister to him. In March 2004, she flew to Serbia and Montenegro to be at his side after he underwent open heart surgery. Applicant's closeness to family members who are citizens and residents of Serbia and Montenegro could make Applicant vulnerable to coercion, exploitation, or pressure by individuals or groups hostile to the U.S.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the United States. MC E2.A2.1.3.1. While the evidence does not establish that Applicant's parents, brother, and mother-in-law are agents of a foreign power, Applicant offered no evidence to rebut the Government's assertion that her family members in Serbia and Montenegro could be exploited by groups or individuals in a way that could force her to choose between loyalty to her family and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005). Accordingly, MC E2.A2.1.3.1. does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if she shows her contacts and correspondence with foreign citizens are casual and infrequent. MC E2.A2.1.3.3. Applicant's relationships with her parents, brother, and mother-in-law, who are citizens and residents of Serbia and Montenegro, are based on ties of familial affection or obligation. She and her husband are in frequent contact with their parents, and she shows genuine concern for the well-being of her brother. She has traveled to Serbia and Montenegro approximately 10 times since 1996 to visit her family, demonstrating that her contacts with her family members are not infrequent. Therefore, mitigating condition E2.A2.1.3.3. does not apply to Applicant's relationships with her close family members in Serbia and Montenegro. Accordingly, the allegations in subparagraphs 2.a. through 2.d. of the SOR are concluded against the Applicant.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, or any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

DECISION

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

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.