

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant is married to a Mexican citizen who is residing in the United States illegally. She and her husband travel to Mexico on a regular basis to visit her in-laws. Clearance is denied.

CASE NO: 04-04047h1

DATE: 04/13/2006

DATE: April 13, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04047

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is married to a Mexican citizen who is residing in the United States illegally. She and her husband travel to Mexico on a regular basis to visit her in-laws. Clearance is denied.

STATEMENT OF THE CASE

On April 13, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence), and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on June 13, 2005, and admitted all Guideline B allegations. While she wrote "I admit" in her response to the allegation contained in subparagraph 2.b, it is clear from her explanation that she intended to deny that she deliberately falsified the security clearance application she submitted. Applicant neither admitted nor denied the allegation contained in subparagraph 2.a. She requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on September 7, 2005, that was mailed to Applicant on September 21, 2005. Applicant acknowledged receipt of the FORM on December 7, 2005. Applicant did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to her. The case was assigned to me February 17, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 34-year-old married woman with two children who has been employed by a defense contractor as a senior help desk coordinator since November 2002. She was previously employed as a computer operator from May 2002 until November 2002, as an accounts receivable manager from December 1997 until January 2002, and as an accounts receivable employee from April 1992 until December 1997.

Applicant was unemployed from January 2002 until May 2002. She indicated in a security clearance application she submitted in October 2002, and in a statement she provided in January 2004, that she had been terminated from employment in January 2002 after she unexpectedly called work and informed her employer she needed to take two weeks vacation. She explained in the statement that the reason she needed to use unplanned vacation time was because some men had shot at her husband necessitating an immediate family relocation to another city.

Applicant married her husband, a citizen of Mexico, in October 1999. In her response to the SOR, Applicant claimed to have filed for a divorce from her husband. However, she did not provide any documentation in support of that claim either with her response to the SOR or in response to the FORM.

Applicant resided in Mexico from January 12, 2002, about the time she states some men attempted to shoot her husband, until August 18, 2002, and again from September 18, 2002 until October 1, 2002. Applicant's parents-in-law, two brothers-in-law, and sister-in-law are citizens and residents of Mexico. She also has two sisters-in-law who reside in the U.S., although their resident status is unknown.

Applicant visits with her in-laws in Mexico about once a month in the company of her husband and children. Her husband travels with her and her children and is not asked to provide proof of citizenship in order to gain entry into the United States. (Ex. 7, p. 3) Applicant's husband owns a house and some vacant land in exico. They stay in the house he owns in Mexico while in that country.

The United States Department of State reports that kidnapping, including the kidnapping of non-Mexicans, continues at alarming rates in Mexico. (Ex. 6, p. 4) Additionally, there have been instances where Americans have become the victims of harassment, mistreatment and extortion by Mexican law enforcement and other officials. (Ex. 6, p. 4) Drug-related violence has increased in Mexico, and, while U.S. citizens not involved in criminal activity are generally not targeted, foreign visitors, including Americans, have been among the victims of homicides and kidnappings in the border region. (Ex. 6 pp. 5-6).

Applicant executed and submitted a security clearance application (SF 86) in October 2002 in which she certified the statements contained therein were true, complete and correct to the best of her belief and knowledge. In the SF 86, Applicant claimed her husband resided in Mexico and that she did not know his social security number. In a statement she provided in January 2004, Applicant implied that her husband was living with her in the U.S. at that time. In her response to the SOR, Applicant acknowledged that her husband was living with her at the time she provided the statement in January 2004, but claimed that he had been residing in Mexico in October 2002 when she submitted the SF 86.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Foreign Influence. A security risk may exist when an individual's immediate family, including cohabitants, 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. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Applicant's parents-in-law, two brothers-in-law, and sister-in-law are citizens and residents of Mexico. She maintains regular contact with these relatives by visiting with them in Mexico on a monthly basis. Additionally, her husband is a citizen of Mexico, who has been residing in the United States illegally for a number of years. He owns a home and vacant land in Mexico, and Applicant and her husband regularly stay in that home. Applicant was herself a resident of exico for almost eight months in 2002, including an extended stay shortly after some men attempted to kill her husband while they were residing in the United States.

Applicant claimed in her response to the SOR that she had filed for a divorce from her husband. However, she failed to present any documentation with her response to corroborate that claim. More significantly, she did not submit any documentation that she had obtained a divorce or that divorce proceedings were still pending in response to receipt of the FORM. Thus, the credible evidence indicates she is still married to an individual who is residing in the U.S. illegally.

Disqualifying Conditions (DC) 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;* and DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists* apply. I have considered all mitigating conditions and none apply.

Personal Conduct. Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

The evidence establishes that Applicant relocated to Mexico to reside, presumably with her husband and children, shortly after there was an attempt to kill him in January 2002. Although Applicant returned to live in the U.S. in August 2002, there is no evidence to indicate when her husband returned, other than that he was living with her in January 2004. It is quite possible that he remained in Mexico until sometime after Applicant returned to the United States and submitted the SF 86. Thus, there is no evidence that she deliberately falsified the security clearance application she submitted in October 2002 by listing her husband's address as being in Mexico.

Applicant has knowingly been married to and living with an individual who is in the United States illegally. Revelation of his status could potentially lead to the imposition of criminal penalties against either or both of them and result in his deportation. DC 4: *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail* applies.

While Applicant has now disclosed her husband's illegal status in the course of her background investigation, there is no indication who else knows

about it, including other government agencies, or what effect further disclosure may have. Accordingly, although Applicant is entitled to some consideration under mitigating condition (MC) 5: *The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress* her action has been insufficient to eliminate the security concern caused by her marriage to and residence with an illegal alien.

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. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I conclude that Applicant has failed to present sufficient evidence of refutation, extenuation, and mitigation to overcome the case against her.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: Against Applicant

Subparagraphs a-d: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: For Applicant

DECISION

In light of all 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.

Henry Lazzaro
Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.