

KEYWORD: Foreign Influence

DIGEST: Applicant is 26 years old, married with one child, and works for a defense contractor. Her husband immigrated from Montenegro in 1993 and was granted political asylum. One of his brothers also immigrated about the same time. Applicant's parents immigrated in 1972. Her parents and her husband have permanent residency. Her husband's family live in Montenegro, where they are poor farmers. Applicant mitigated the foreign influence security concern. Clearance is granted.

CASENO: 04-04130.h1

DATE: 01/12/2006

DATE: January 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04130

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Braden Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 26 years old, married with one child, and works for a defense contractor. Her husband immigrated from Montenegro in 1993 and was granted political asylum. One of his brothers also immigrated about the same time. Applicant's parents immigrated in 1972. Her parents and her husband have permanent residency. Her husband's family live in Montenegro, where they are poor farmers. Applicant mitigated the foreign influence 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 March 30, 2005, 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 April 8, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on June 27, 2005. On July 27, 2005, 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. DOHA received the hearing transcript (Tr.) on August 5, 2005.

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 26 years old, married, and works for a defense contractor. She has a bachelor's degree in business, and currently is working on a master's degree in business. She is highly regarded by her supervisors for the quality of her work. They regard her highly, and rate her on her annual evaluations as "far exceeds expectations". She is a U.S. citizen with a U.S. passport. (Tr. 64, 76, 77, 82; Exhibit 1)

Applicant's husband is a citizen of Serbia and Montenegro with a passport from that country. His family lives in the Montenegro republic. They are farmers and have no more than a fourth grade education. He has two brothers and two sisters. One brother lives in the U.S., having immigrated in December 1992 to escape his homeland's political strife. Applicant's husband is 33 years old. He immigrated to the U.S. in February 1993, having deserted the Yugoslavian Army six months earlier during the period in which the Yugoslavian Republic broke into various ethnic and political parts. He deserted because he did not want to fire on civilians as part of the growing civil war. His father helped him desert, and he hid in Montenegro and Albania until his father could get him a passport with a fictitious name. He was stopped by U.S. authorities after debarking the airplane in the U.S., arrested and jailed until bailed out by an uncle who lives in the U.S. Applicant's husband then applied for political asylum, which status was granted him in 1998. He and his brother obtained permanent residency status and were issued green cards. He obtained an associate's degree from a community college, and currently works for an automobile dealership. In 1998 he married Applicant, and has one son. He retains his Serbian/Montenegrin citizenship and passport, and will apply for U.S. citizenship in the future when able to do so. His brother in the U.S. will apply for U.S. citizenship in December 2005. Applicant's husband traveled to Montenegro in December 2004 through January 2005 for 2.5 weeks to visit his parents and siblings. This trip was the first one he took since leaving his homeland in February 1993. (Tr. 16-55, 104, 110; Exhibit 1)

Applicant is one of four children of Yugoslavian immigrants who came to the U.S. in 1972. She and her three siblings were born in the U.S. and have citizenship. Applicant has a baby born in the U.S. Her parents hold U.S. permanent residency status, but never became U.S. citizens in the past 33 years they have lived in the U.S. Her mother does not read or write English comfortably, speaking primarily Albanian, her native language. Her father has a brother and sister living in Montenegro whom he telephones once or twice a year. Applicant does not talk to her father's family in Europe because they never have done so nor do they have any relationship that would require conversation or contact with any regularity or familiarity. Applicant has more occasion to speak with her husband's family on a regular basis during her husband's weekly telephone calls. She visited them in the summer of 2004 in Montenegro, finding them nice and decent people, but poor farmers, all of whom live in the same house. Applicant's father and mother-in-law visited in the U.S. in 1998 for the wedding, and the mother-in-law came for nine months in 2001. (Tr. 44, 65, 81-89, 108, 115; Exhibit 1)

Applicant and her husband send his family several thousand dollars in cash and/or clothing every year. The total never exceeds \$5,000 in value annually. They send that money through relatives going to visit the family from the U.S. because there are few if any banks in the area and cash is easier to transport and be used by her husband's family. Their money is sent to help the family because they are poor farmers. Applicant's brother-in-law, who lives in the same house with them, also contributes to this annual donation. (Tr. 50, 92-96, 102, 103)

Montenegro is part of a federated nation in the Balkans area of eastern Europe. Montenegro is slightly smaller in size than the state of Connecticut. Serbia is slightly smaller than the state of Maine. Together, they are slightly smaller than the Commonwealth of Kentucky. In their 2002 census, Montenegro had 650,575 people, and Serbia without Kosovo had about 7.4 million people. The population growth rate according to the 2002 census was -.27%. The per capita income in 2003 was \$2,370. Agriculture is 15% of the nation's gross national product. Montenegro uses the euro as its currency, while Serbia uses its own dinar. Montenegro fought on the Allied side in World War I, and after the war was absorbed into the new nation of Yugoslavia. The government acts independently of the Serbian government on many issues. It generally respects human rights, but there are problems in certain areas. It is a parliamentary democracy. Its topography is mountainous. (Tr. 46; Exhibits 2, 3 at 37-45, 4)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

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. 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. ay 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: The Concern: 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.
E2.A2.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Based on those allegations, admissions, and the evidence adduced at the hearing, I conclude there are several Disqualifying Conditions (DC) and Mitigating Conditions (MC) applicable in this case.

Under the foreign influence guideline, 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. E2.A2.1.2.1) 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. E2.1.2.2) apply. Applicant's parents, husband, brothers-in-law, sisters-in-law, and parents-in-law are all citizens of Montenegro. Her parents have lived in the U.S. for 30 years and have permanent residency status, as do her husband and his brother. Her husband and brother-in-law will apply for U.S. citizenship when eligible, with the brother-in-law applying this year, and her husband later. DC 2 is the lesser of the two DC here, because while Applicant lives with her husband and his brother, and showing of a potential for adverse foreign influence

or duress is slight because those two men come from a poor Balkan country who fled their nation's civil war in the early 1990s. They have high school educations and come from a family of poor farmers without political or economic connections to any Montenegrin government.

MC 1 (A determination that the immediate family members (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate 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 United States. E2.A2.1.3.1) applies. Clearly, no one in Applicant's immediate family membership is an agent of Montenegro or Serbia. Her parents live in the U.S. as they have for 33 years, have all their money and possessions here, and are not in a position to be exploited by any government.

Her in-laws in Montenegro are poor farmers, all living together in the same house. When Applicant helps them financially, it is with cash and clothing because there is no bank nearby. If any foreign power wanted to exploit that family, it would have to find them first. As Applicant works on information security analyses, whatever she knows may not be of value to any foreign government anyway because she is not a prime mover in a system development, is not in charge of any system, nor is she a scientist or inventor.

Lastly, the Montenegrin government rules over a small country in the Balkans. The small population is less than some counties in the U.S. It does not have the history, finances, or ability to engage in exploitation of poor farmers to find out what Applicant knows or does for her employer and the U.S. government. It has no military ability to project force, nor was there any evidence in the hearing about Montenegro engaging in industrial, military, or political espionage. It is unrealistic and impractical to speculate that the Montenegrin government could exploit Applicant or her relatives. It is a harmless little country that can do the U.S. no harm, nor has it ever. It is a mouse that has never roared.

Balancing all the evidence, with the "whole person concept," and Applicant's family history and connections, I conclude the MC outweighs Applicant's choice of parents and a husband. 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

Subparagraph 1.d: For Applicant

Subparagraph 1.e: 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).