

KEYWORD: Foreign Influence

DIGEST: Applicant is a 46-year-old linguist/recruiter born in what was the Kosovo region of Yugoslavia. He came to the U.S. in the late 1980s, married, and became a U.S. citizen in 1997. He worked for the U.S. Government for about 10 years in broadcasting and received a security clearance in 1995. He is employed by a major defense contractor and traveled to his area of origin on extensive business trips, always maintaining his residence in the U.S. Applicant maintains contact with his elderly parents and a brother who still reside in Kosovo, but his emotional ties are with his family in the U.S. He has been recognized for his invaluable service to U.S. interests. Applicant is aware of his responsibilities in protecting U.S. secrets and avers an intent to report any improper contacts. Mitigation has been shown. Clearance is granted.

CASENO: 04-05676.h1

DATE: 12/05/2005

DATE: December 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05676

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 46-year-old linguist/recruiter born in what was the Kosovo region of Yugoslavia. He came to the U.S. in the late 1980s, married, and became a U.S. citizen in 1997. He worked for the U.S. Government for about 10 years in broadcasting and received a security clearance in 1995. He is employed by a major defense contractor and traveled to his area of origin on extensive business trips, always maintaining his residence in the U.S. Applicant maintains contact with his elderly parents and a brother who still reside in Kosovo, but his emotional ties are with his family in the U.S. He has been recognized for his invaluable service to U.S. interests. Applicant is aware of his responsibilities in protecting U.S. secrets and avers an intent to report any improper contacts. Itigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On April 5, 2005, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On April 22, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record. Department Counsel issued a File of Relative Material (FORM) on after a hearing. Any response by Applicant was due by July 21, 2005. Applicant did submit a response dated August 16, 2005, which was accepted as timely by Department Counsel because Applicant had been out of the country. The case was assigned to me on July 7, 2005.

FINDINGS OF FACT

Applicant is a 46-year-old linguist for a defense contractor. The SOR contains four allegations, 1.a. - 1.d., under Guideline B (Foreign Influence). In his response, Applicant *admits* the factual statements in all four allegations. The factual admissions are accepted and incorporated as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of Fact as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's parents are citizens and residents of Serbia and Montenegro, currently residing in Kosovo. His father is 76 and retired in 1992. His mother is 72 and has been a homemaker all of her life. Neither has ever had any connection with the foreign government.

1.b. - Applicant's two brothers are citizens and residents of Serbia and Montenegro, currently residing in Kosovo. One brother is a medical doctor and the other is in business. Neither has ever had any connection with the foreign government.

None of his family members are sympathetic to the] Serbian government (AX A).

1.c. - Applicant sends about \$200 to \$300 per month to his parents in Serbia and Montenegro.

During 2003 and 2004, the amounts have been \$50 to 100 per month. The parents are financially well off. The money has been a "token of appreciation" and ended in June 2004, when Applicant purchased a new house in State A.

1.d. - Applicant lived part-time (on company business) resided in Kosovo, ⁽¹⁾ Serbia and Montenegro from about August 1999 to December 2000, but he retained his residence in State A. Applicant had worked for the an agency of the U.S. Government since 1990 and was asked by the Government to help develop radio and television in post war Kosovo (Item 3).

1.e. - Applicant later lived for some period in Kosovo and Macedonia from about May 2001 to September 2002, but continued to have his residence in State A. He was traveling and working for an international organization in improving the quality of media reporting. He had close contact with the U.S. Embassy and helped U.S. officials negotiate a peace agreement.

1.f. - Applicant traveled to Kosovo, Serbia and Montenegro in at least 2001, 2002, and 2003.

In 2001-2003, he traveled as part of his work for the international organization cited in 1.e. Since 2003 -2004, he has recruited foreign linguists for a U.S. defense contractor and traveled to the cited countries. He expected to return to the U.S. for the same company in July 2005.

Applicant was born in 1959. He has been in the U.S. since at least 1989/1990 and became a U.S. citizen in 1997 (Item 4). He first received a security clearance in 1995. There is no evidence suggesting that Applicant has ever has any security-related problems. He is married to an American citizen and has a small U.S.-born son. He considers himself to be a loyal, dedicate, and appreciative American, who is a part of American society. He owns a home and is active in community affairs He clearly understands his obligations to the U.S. and would promptly report any improper contacts (AX A).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics

and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in 1959 in what was then Yugoslavia. He came to the U.S. about 15 years ago and has made himself a part of America society. His talents as a linguist have made him invaluable to the U.S. Government as a recruiter of native speakers. He has spent considerable time back in his native area, supporting U.S. efforts to bring peace to that troubled region, clearly at considerable risk to his own safety. His efforts have been praised by U.S. officials, including a U.S. ambassador to the region who specifically requested Applicant's presence there (Item 3, attachment).

Applicant is married to an American citizen and has a young child. He owns a home and is active in community affairs. All the evidence suggests a man who has demonstrated his dedication to the country that welcomed him some 15 years ago and gave him a chance to grow. I have carefully considered the information in Official Notice documents Items 6, 7, and 8. The region remains an unstable one, but Applicant avers he and his parents have negative feelings about the Serbian government and Kosovo, in any case, remains under U.N. control. As I evaluate the information in the three official notice exhibits, the problems in the region do not focus on gather on the collection of U.S. security secrets

Considering the totality of the evidence, the family ties cited in the SOR establish a risk in the abstract, in that the absence of problems in the past does not mean there will not be any in the future, but such absence must be taken into account with all other relevant evidence. There is no evidence suggesting that Applicant's family members are agents of a foreign government. While they might be pressured to ask Applicant to act improperly, it is not clear what country or government might seek to contact Applicant, and why. Even more importantly, Applicant's career in this country has demonstrated that he is considered trustworthy for years by high U.S. Government officials thereof. I conclude that his preferences are unequivocally with the United States and that he can be relied upon to reject and report any attempts to persuade him to act against U.S. interests.

Guideline C (Foreign Influence): "The Concern: A security risk may exist when [members of]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to

coercion, exploitation, or pressure."

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk" (Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002)): I take official notice that the Kosovo, while still officially a part of Serbia and Montenegro, is currently a U.N. Administered Protectorate. Neither Serbia nor Kosovo is listed by the U.S. government as being among active intelligence gatherers in the U.S. (Items 6, 7, and 8). Appeal Board guidance states that: "family ties in [any] foreign country raise a *prima facie* security concern" that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)).

Disqualifying Condition - (1) " an immediate family member . . . is a citizen of, or resident or present in, a foreign country." Mitigating Condition (1) - "a determination that the immediate family members . . . would not constitute an unacceptable security risk."

Mitigating Condition (MC) 1; "the immediate family members . . . are not agents of a foreign power or are in a position to be exploited by a foreign power in a way that could force the individual to choose between his loyalty to the persons involved and the U.S." is applicable.

All of the evidence shows Applicant to be a man of integrity, and one who understands his responsibilities to his country. Nothing in the evidence suggests otherwise. I conclude he has the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets. I also conclude that he can be relied upon to place the nation's security interests above any concerns for his family members in Kosovo.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Applicant states that Kosovo is a disputed province of Serbia and Montenegro (Item 3).