

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is among the thousands of immigrants who have immigrated to the U.S. through the State Department's Diversity Visa Lottery Program. He is a now a 33-year-old married man with two young children, who at the age of 21, left Serbia and Montenegro (formerly Yugoslavia) in 1995. Applicant is employed as a principal investigator for a large defense contractor. Applicant's parents and one sister are resident citizens of Serbia and Montenegro. He has surrendered his foreign passport and renounced his former citizenship. Based on the record evidence as a whole, Applicant has successfully mitigated the security concerns of foreign influence and foreign preference. Clearance is granted.

CASENO: 04-08564.h1

DATE: 02/21/2006

DATE: February 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08564

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esq.

SYNOPSIS

Applicant is among the thousands of immigrants who have immigrated to the U.S. through the State Department's Diversity Visa Lottery Program. He is now a 33-year-old married man with two young children, who at the age of 21, left Serbia and Montenegro (formerly Yugoslavia) in 1995. Applicant is employed as a principal investigator for a large defense contractor. Applicant's parents and one sister are resident citizens of Serbia and Montenegro. He has surrendered his foreign passport and renounced his former citizenship. Based on the record evidence as a whole, Applicant has successfully mitigated the security concerns of foreign influence and foreign preference. 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 May 26, 2005, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence), and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on June 2, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on July 7, 2005. On July 20, 2005, DOHA issued a notice of hearing scheduling the hearing for September 28, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the Government presented three exhibits, which were admitted as Government Exhibits (GE) 1 through 3, without objections. Applicant presented 15 exhibits, which were admitted as Applicant Exhibits (AE) A through O, without objections. Upon request from Counsel for Applicant, I took official notice of the definition of a "foreign power" as defined by 50 USC § 1801. Appellate Exhibit. 1. DOHA received the transcript (Tr.) of the proceeding on October 11, 2005.

FINDINGS OF FACT

In his Answer, Applicant admitted the SOR allegations except for paragraphs 1.c. and 2.c. His admissions are incorporated into my findings, and after a thorough review of the record, I make the following findings of fact:

Applicant is a 33-year-old principal investigator for a large defense contractor and has been employed with this company since November 2000. He seeks a security clearance to further advance his career within his company. He testified during the hearing, and I find his testimony credible. Applicant was born and raised in Serbia and Montenegro (formerly known as Yugoslavia). He is among the thousands of immigrants who have lawfully gained visas to the U.S. through the State Department's Diversity Lottery Program.

Applicant described the limited opportunities available in Serbia and Montenegro and poor quality of life as the reasons he desired to leave. Conversely, he spoke of the opportunities and freedom that exist in the U.S. as the driving force he chose to immigrate. In 1995, the then 21-year-old Applicant immigrated to the U.S., and settled in the Pacific Northwest. Immediately after arriving in the U.S., he registered for the selective service.

Consistent with his desire to pursue opportunities in the U.S., Applicant earned a bachelor of science degree majoring in mechanical engineering in June 1999, a master of science degree in systems engineering in December 2002, and is currently a Ph.D. candidate in the field of systems engineering and control systems. He became a naturalized U.S. citizen in April 2001 and has held a U.S. passport since April 2001. He married his wife, a U.S. born citizen, in June 2002. They have two U.S. born children, a 2-year-old son and an 11-month-old daughter.

Applicant maintains checking and savings accounts as well certificates of deposit in the U.S. AE C, AE D. He has a 401(k) retirement plan through his employer and owns a home valued at \$500,000.00 with a mortgage of \$297,000.00. AE F, AE E. He has voted four times since becoming a U.S. citizen and exercises all rights of citizenship.

Applicant's parents are resident citizens of Serbia and Montenegro. His father is a retired journalist for an economic magazine and his mother is a retired legal counsel for the human resources department of a local state postal company. They have no connection with the Serbia and Montenegro government or military or with any organization or company that would have an interest in U.S. classified information. Applicant has fairly regular contact with his parents, perhaps calling them twice a month.

Following the end of World War II, the former Yugoslavia was a communist state and Applicant's parents were "very anti-communist." Applicant testified: "They were marked by the Government as enemies of state, both of them, because they were oriented towards the Royalist⁽²⁾ movement. So after the Second World War when the Communists won power, they just didn't have a very good time." Applicant's parents were "very well off" before the Communists took control of the government. After Communism was established, all of their property was seized and both parents had considerable difficulty finding employment. A portion of his mother's family property has since been restored after the fall of the former Yugoslavia, but his father was not so fortunate. Tr. 24.

Applicant testified that shortly after becoming a U.S. citizen, he contacted the former Yugoslavian Embassy in Ottawa, Canada, to inquire about surrendering his passport and renouncing his citizenship. He was informed he would be required to pay a substantial sum of money presumably to compensate the Yugoslavian government for medical and educational benefits he derived before leaving in 1995. Tr. 29-30. In September 2005, Applicant surrendered his Yugoslavian passport and renounced his Yugoslavian citizenship, acquired by birth, to the Consulate General of Serbia and Montenegro. (3) AE J. Applicant was not aware possession of a foreign passport was a disqualifying factor in obtaining a security clearance. As soon as he became aware of the Money memorandum requirement, he complied. Tr. 28-29.

Applicant has one sibling, a younger sister, who is married and a resident citizen of Serbia Montenegro. She is legal counsel for the local telephone company. Applicant's brother-in-law works for a private company that sells and trades television broadcasting rights. Applicant has limited telephone contact with his younger sister, "a little bit less than to my parents." Tr. 21.

Since immigrating to the U.S., Applicant has returned four times to Serbia and Montenegro in 1997, 2001, 2002, and 2004. Applicant's parents visited Applicant and his wife following the birth of their second child in 2005. The purpose of these trips was to visit his family. Applicant provides no financial support to any family members in Serbia and Montenegro.

During one or more of his visits to Yugoslavia (Serbia and Montenegro), Applicant traveled with his U.S. and Yugoslavian passport. The Yugoslavian customs officer inquired whether he held a Yugoslavian passport and Applicant responded affirmatively and produced his Yugoslavian passport as requested. Applicant testified he never would have traveled or used his Yugoslavian passport if he knew it would later become an obstacle in being granted a security clearance. At the time of these visits, Applicant did not possess nor was he in the process of seeking a security clearance. As such, he had no reason to be aware of, nor was he aware of the Money Memorandum's prohibition against holding a foreign passport. If Applicant's future plans involve travel to Serbia and Montenegro, he will use his U.S. passport. He does not anticipate any difficulties in using his U.S. passport should such travel occur. Tr. 30.

Applicant has established an excellent performance record with his employer. His supervisors and co-workers enthusiastically and without reservation speak of his work ethic, honesty, and loyalty, and contribution to the defense industry. AE H, AE I, AE J. Equally impressive are his social references, who speak of Applicant in similar terms and also emphasize his honesty and trustworthiness and commitment as a husband and father. AE A, AE B.

Serbia and Montenegro is in the process of seeking admission to NATO. AE O. Serbia and Montenegro have not been identified as active collectors of intelligence in the U.S. or as having interests adverse to the U.S. AE N.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the government must establish, by substantial 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. All that is required is proof of facts and circumstances which 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. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation,

or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's parents and sister are resident citizens of Serbia and Montenegro; (¶¶ 1.a., 1.b.); and that Applicant traveled to Serbia and Montenegro in 1997, 2001, 2002, and 2004. A security risk may exist when an Applicant's immediate family, or other persons to whom he 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.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR-Applicant has immediate family members who are resident citizens of a foreign country. He has fairly regular contact with his parents and sister through occasional telephone calls. His four trips to Serbia and Montenegro are also evidence of his family ties. Taken together, these circumstances raise a security concern under Disqualifying Condition (DC) 1: *An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.* While the

mere possession of family ties with persons in a foreign country is not, as a matter of law,

automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb 8, 2001). I have reviewed the Mitigating Conditions (MC) under Guideline B and conclude MC 1 applies for Applicant: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohibitant, or associate(s) 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 person(s) involved and the United States.*

The record evidence shows that Applicant's family members are not Serbia and Montenegro agents or agents of any other foreign power.⁽⁴⁾ The remaining issue under MC 1 is if the family members are in a position to be exploited by the Serbia and Montenegro government. Serbia and Montenegro, formerly was known as Yugoslavia, was a communist state. That is no longer the case today. Serbia and Montenegro are in the process of seeking admission to NATO. It is a country undergoing profound political and economic change.⁽⁵⁾ Diplomatic relations have normalized with the U.S. More specific to this case, his family members are not employed by or connected with the Serbia and Montenegro military or a governmental agency or some other organization that may have an interest in U.S. classified information. Given these circumstances, his family members are not in a position where they could be subject to exploitation.

In addition to MC 1, also applicable is MC 5: *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.* Applicant has no financial interest in Serbia and Montenegro. Quite to the contrary - his sole financial holdings are in the U.S. and substantial. He earns his income in the U.S. by working hard for a U.S. defense contractor. Applicant and his wife own a home and have substantial investments in the U.S.

The analysis does not necessarily end with the formal mitigating conditions, as other matters under the whole-person concept may mitigate the security concern. Nor are security clearance decisions an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29. First, Applicant's commitment to the U.S. is high. It is difficult to appreciate the gravity of his decision, at age 21, to leave his immediate family and immigrate to the U.S. for the possibility of becoming a U.S. citizen and enjoy the opportunities available to him. Second, Applicant's ties or connections to the U.S. are strong. He has lived in the U.S. for the past 12 years.

Since his arrival here, Applicant can fairly be described as a model immigrant. He registered with the selective service, earned a bachelor of science degree and a master's degree, and is working on his Ph.D, and is employed full-time as a principal investigator for a defense contractor. Moreover, his professional career and financial interests are in the U.S. and that is not likely to change. He is also a devoted husband and father of two small children. These are examples of ties that bind most individuals to a participatory society as the U.S.

Applicant's parents are retired and living peaceful lives. Their having been identified as Royalist sympathizers under the previous communist regime caused them many hardships. There has been no carryover from those former times and Applicant's mother's family property confiscated by the communists has been partially restored. Applicant is a loyal United States citizen, and has strong ties of affection or obligation to his family members, in particular his aging parents, who are resident citizens of Serbia and Montenegro. Applicant's primary purpose in traveling to Serbia and

Montenegro was to visit his aging parents and check on their well being as well as visiting his sister.

In conclusion, the record evidence demonstrates Applicant has all the indicators of a self-reliant, industrious, mature, responsible, and trustworthy individual. After weighing the record evidence as a whole, I conclude Applicant has successfully mitigated the foreign influence security concern raised by his family ties to Serbia and Montenegro. Accordingly, Guideline B is decided for Applicant.

Guideline C - Foreign Preference

In the SOR, DOHA alleged Applicant exercised dual citizenship with Serbia and Montenegro (formerly known as Yugoslavia) and the United States (§ 1.a.), that he possessed a Yugoslavian passport (§ 1.b.), that he used his Yugoslavian passport in lieu of his U.S. passport (§ 1.c), and that he maintained his Serbia and Montenegro citizenship because he would have to reimburse the Serbia and Montenegro government approximately \$12,000.00 for medical and educational benefits he had received (§ 2.d.). A security risk may exist when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. Directive E2.A3.1.1.

The Government established by substantial evidence and Applicant's admission each of the allegations in the SOR. However, since the SOR was issued and before the hearing, the Applicant renounced his Serbia and Montenegro (Yugoslavian) citizenship and surrendered his Serbia and Montenegro (Yugoslavian) passport. His possession and use of a Yugoslavian passport occurred when he did not hold a clearance and was unaware such conduct would pose future problems in being granted a clearance. When he inquired in 2001 about renouncing his then Yugoslavian citizenship and surrendering his passport, he was overwhelmed at having to reimburse the Yugoslavian government \$12,000.00. This was purportedly for educational and medical benefits he derived while a resident citizen of Yugoslavia and payment of such a sum occurred at a time in his life when he could ill afford it.

It is clear that once Applicant became aware of what was required, he took definitive and corrective action. Applicant considers the removal of any obstacles that would interfere with his being granted a clearance far more important than any direct or indirect benefit he would derive from retaining his former citizenship and passport. DC 1: *The exercise of dual citizenship*; and DC 2: *Possession and/or use of a foreign passport* identified in the SOR under Guideline C have been mitigated by MC 1: *Dual citizenship is based solely on parents' citizenship or birth in a foreign country*; MC 4: *Individual has expressed a willingness to renounce dual citizenship*; and compliance with the Money Memorandum. After weighing the record evidence as a whole, I find for Applicant on this concern. Accordingly, Guideline C is decided for Applicant.

To conclude, Applicant has met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole person concept, the clearly consistent standard, and the appropriate factors

and guidelines in the Directive.

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

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: 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.

Robert J. Tuider

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.
2. The Royalists were associated with the king and former government of Yugoslavia before the Communists assumed power at the end of World War II. Tr. 24.
3. The SOR alleged Applicant held a Yugoslavian passport. Assistant Secretary of Defense Memorandum, dated August 16, 2000, for Secretaries Of The ilitary Departments, et al, SUBJECT: Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Guideline, commonly known as the "Money Memorandum" states in part the possession or use of a foreign passport may be a disqualifying condition unless sanctioned by the U.S. government. The Memorandum further stated that any clearance be denied or revoked unless the applicant surrenders the foreign passport. Applicant has complied with this policy.
4. *See* 50 U.S.C. § 1801(b), which defines the term of art "agent of a foreign power." Appellate Exhibit 1.
5. U.S. Department of State , Bureau of Consular Affairs, Consular Information Sheet, "Serbia and Montenegro (Former Yugoslavia, Federal Republic of), dated July 1, 2005. AE L.