

DATE: April 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-11906

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant applied to be a Croatian citizen before she joined the defense industry. Once informed of the Government's concerns, she has moved quickly to revoke her Croatian citizenship. Her present personal relationships with foreign nationals is not of a type that would have current security significance. Sufficient mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On July 19, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 9, 2005, and requested a hearing. The case was received by the undersigned on September 22, 2005, and a Notice of Hearing was issued on September 28, 2005.

A hearing was held on October 21, 2005, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted seven exhibits. The transcript was received on November 3, 2005.

FINDINGS OF FACT

The Applicant is 26, single and has a Master of Science degree in Mathematics. She is employed by a defense contractor as an Analyst, and she seeks a Secret-level DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in such a way as to show a preference for another country over the United States.

The Applicant is a native born American citizen. Her parents are naturalized Americans of Croatian descent. In 2002, before she began working in the defense industry, the Applicant applied to become a Croatian citizen. She was eligible for Croatian citizenship because her parents were born in Croatia and the Applicant could read and write in that language. (Transcript at 20-21.)

The Applicant began her present employment in December 2003. Once she was notified of the Government's concern with her dual citizenship, she made the decision to revoke the Croatian citizenship as soon as possible. A letter from the Croatian Consulate General dated August 8, 2005, indicates that she has done this. (Applicant's Exhibit A.) This letter also states that the Applicant has no official identification documents issued by the Croatian government, such as a passport.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make her vulnerable to coercion, exploitation or pressure.

The Applicant has one great-aunt residing in Croatia. She visited this aunt during summer vacation from college in 2000, 2001 and 2003. (Transcript at 22-24, 31-34 and Applicant's Exhibit D.) The Applicant also visited this aunt with some of her co-workers in 2005. (Transcript at 24-25, Applicant's Exhibit E.) She calls this elderly relative several times a year.

The Applicant has other extended relatives who live in Croatia. However, her aunt is the only relative who the Applicant has any continuing contact with.

In addition to her relatives, the Applicant has a friend who lives in Croatia. At one time they were fairly close, and she visited him in Croatia. Now, however, they have drifted apart and may contact one another by email about ten times per year. (Transcript at 25-26.)

Since 2001, the Applicant has been on the Board of Directors of the Friends of the Croatian Cultural Center, a non-profit organization that runs a Croatian/American Hall in the major American city where the Applicant lives. Two other board members were the Croatian Consul General and another Consular Official. With regards to the Consul General, the Applicant's relationship with this person was strictly professional. The Consul General was recalled to Croatia in September 2005. (Applicant's Exhibit C.)

The Applicant is one of the most involved members of the Board of Directors. The Consular Official is also someone who takes his responsibilities as a board member seriously. Accordingly, the two of them were behind many of the events at the Croatian/American Hall. (Applicant's Exhibit F.) The Applicant and the Consular Official became close and began a romantic relationship for several months in 2002. According to the Applicant, this relationship was not something that she was ashamed of. It ended on its own, primarily because of the almost 20 year difference in age between them. (Transcript at 40-47.) Their current relationship is strictly professional, primarily concerning the Croatian Cultural Center.

The Consular Official submitted a written statement on behalf of the Applicant. (Applicant's Exhibit G.) He states that he is not a spy, that his job entails Consular Affairs and that he has never asked, and has no interest in, the Applicant's job. He agrees that their relationship ended in 2002 and that they now have a strictly friend relationship. Finally, the Consular Official indicates that his tour in the United States is almost over and he will be returning to Croatia in 2006.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections or be subject to foreign influence that may lead to poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been

established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant was a dual citizen of Croatia and the United States (Guideline C); and that the Applicant has family members overseas and had a relationship with a Croatian Consular Official (Guideline B)

The Applicant, on the other hand, has successfully mitigated the Government's case. Once she was informed of the Government's concerns about her possible dual citizenship with Croatia, the Applicant moved very quickly to eliminate the concerns. She has submitted the documentation necessary to revoke her Croatian citizenship. The Applicant testified credibly and believably that she views herself only as an American citizen and would not behave in any fashion that would be harmful to the United States. Such credible testimony is evidence that has some weight, when combined with her other actions.

Under Guideline C, Disqualifying Condition E2.A3.1.2.1. (*The exercise of dual citizenship*) applies. However, the Applicant's conduct has mitigated these concerns. She is in the process of revoking her Croatian citizenship. Mitigating Conditions E2.A3.1.3.1. (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*); and E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*) also apply. Paragraph 1 is found for the Applicant.

Turning to Guideline B, the Applicant has also mitigated the security concerns of Paragraph 2. Croatia is a democracy, heavily dependent on the United States, as stated by the Consular Official in Applicant's Exhibit G. There is little to no chance that the government of Croatia would attempt to use the Applicant's extended family, or her friend, against her. Her trips to Croatia are consistent with an American citizen visiting her parents' homeland to visit her aunt. As stated by the Applicant, "I mean, how many children can say that they got to live on an island for three months and fished and swam." (Transcript at 33.)

At one time, in 2002, the Applicant had a close personal relationship with a Croatian diplomat. That relationship ended over three years ago. Their relationship is now solely concerned with the Croatian Cultural Center. However, on its face, Disqualifying Condition E2.A2.1.2.3. applies (*Relatives, cohabitants, or associates who are connected with any foreign government*).

The record shows that the Applicant is a mature young woman who has progressed in her job. Using the whole person concept, and the Directive's General Factors, it is clear that it is unlikely that the Applicant will be put in a position of having to choose between the interests of any foreign individual or government and the interests of the United States. In addition, as of now, the Applicant's sense of loyalty to the Consular Official in particular is minimal, and the Applicant has such deep and longstanding relationships and loyalties to the United States, that she can be expected to resolve any potential conflict of interest in favor of the interests of the United States.

In addition, with regards to her aunt, Disqualifying Condition E2.A2.1.2.1. (*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*) clearly applies. However, Mitigating Condition E2.A2.1.3.1. (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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*) also applies to that relationship.

In my opinion, based on the particular circumstances of this case, the Applicant has mitigated the security concerns of her foreign connections. Paragraph 2 is found for the Applicant.

The evidence shows that the Applicant is a patriotic American citizen. The Applicant eloquently testified about the importance of her family in the United States, and her pride in being an American citizen and a member of the defense industry. She is knowledgeable about security and understands her responsibility. Using the whole person standard, the Applicant has mitigated the security significance of her foreign connections and alleged foreign preference and is eligible for a security clearance.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: For the Applicant.

Subparagraph 2.c.: For the Applicant.

Subparagraph 2.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 the Applicant.

Wilford H. Ross

Administrative Judge