

DATE: July 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12483

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 42-year-old United States citizen, who has resided in Germany for a number of years while working for a federal contractor. He has held a security clearance for approximately 24 years without any security violations. In 2002, he married a Ukrainian citizen, who resides with him in Germany, along with her young son, also a Ukrainian citizen. His mother-in-law is a citizen resident of Ukraine. Clearance is granted.

STATEMENT OF THE CASE

On June 25, 2003, Applicant filed a security clearance application (SCA) to renew his current clearance. On August 9, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged security concerns under Guideline B (Foreign Influence).

In a sworn statement, dated September 15, 2005, Applicant responded to the SOR allegations. He elected to have his case decided on the written record in lieu of a hearing. On October 20, 2005, Department Counsel submitted the government's file of relevant material (FORM), containing six exhibits labeled as Government Exhibits (GX). The FORM was mailed to Applicant on April 21, 2006, and received on May 6, 2006. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation, but did not file any additional information. On June 14, 2006, the case was assigned to me.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his answer, I make the following findings of fact:

Applicant is 44 years old and a United States citizen. His parents and siblings are citizens and residents of the United States. He served in the army from December 1980 until April 1994, when he was honorably discharged. Since leaving

the army, he has worked as a computer specialist for a federal contractor located in Germany. He has held as a security clearance from approximately 1981 to the present. His current has a top secret clearance. (GX at 3). In the early 1980's he was a security clearance investigator, classified document administrator, and a courier for the army. (*Id*). Since holding a security clearance, there is no evidence that he violated security regulations.

Applicant was married to his first wife, a German citizen, from January 1993 until November 1997. (GX 4 at 3). Subsequently, he met his second wife in Germany and married her in April 2002. She is 31 years old and a Ukrainian citizen. She and her nine-year-old son, also a Ukrainian citizen, reside with him in Germany. Although she was educated as a teacher in Ukraine, she presently works at a restaurant at a United States military base in Germany. She has never worked for the Ukrainian government. She does not have any financial interest in the Ukraine, nor does he. He does not know whether she intends to pursue United States citizenship at this time. The only time he traveled to Ukraine was in 2002 to get married. (GX 5). No information was provided about his intentions to return.

Applicant's in-laws were born in Ukraine. His father-in-law is deceased. His mother-in-law resides in Ukraine and is a retired truck driver, living and working in a remote village in the country. She has not worked for the government, and does not own any property or have any financial interests in Ukraine. (GX 3 at 3).

According to a U.S. Department of State Profile, dated August 2005, Ukraine became an independent state in 1991, after the dissolution of the Soviet Union. In 1996, a new democratic constitution was adopted. "The United States attaches great importance to the success of Ukraine's transition to a democratic state with a flourishing market economy." (GX 6 at 8). The United States has continued to provide substantial economic assistance to the country since its independence more than 20 years ago. Recently the United States government lifted some of the restrictions concerning Ukrainians traveling to the United States. (GX 3 at 3).

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive mandates that security clearance decisions include a review of the whole person. In evaluating an applicant's conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense 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. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past

proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts in this case:

Guideline B - Foreign Influence: 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 U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

CONCLUSIONS

After considering all of the facts in evidence and legal standards, including the "whole person" concept, I conclude the following regarding the allegations in the SOR:

Based on Applicant's admissions, the Government established a potentially disqualifying condition under Foreign Influence Disqualifying Condition (FI DC) 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 or, or resident or present in, a foreign country*). Applicant's wife and stepson are citizens of Ukraine. His mother-in-law is a resident citizen of Ukraine, and falls within this condition as "[t]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at 8 (App. Bd. Feb. 20, 2002).

While family ties with persons in a foreign country are not, as a matter of law, *per se* disqualifying under Guideline B, such ties raise a *prima facie* security concern. This concern is 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. ISCR Case No. 99-0424, 2001 DOHA LEXIS at **33-34 (App. Bd. Feb. 8, 2001).

The burden having shifted to Applicant to produce evidence to rebut, explain, or mitigate the facts, I reviewed all of the mitigating conditions, and concluded that Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.5 (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) applies. In this case, there is no evidence that Applicant, his wife or mother-in-law own property or have financial interests connected to Ukraine that would affect his security responsibilities.

The remaining mitigating conditions under the guideline do not apply based on the facts and circumstances. However, the analysis for security clearance eligibility is not exclusively determined by the application of the articulated mitigating conditions. It also encompasses information about a person's past and present, and factors construed to fall within the purview of the "whole person" concept. In making this analysis, I considered six such factors and gave them substantial weight.

First, Applicant's wife and stepson live with him in Germany, a democratic country and long time ally of the United States. Second, his wife was never employed by the Ukrainian government, nor was his retired mother-in-law. Third, Applicant has strong ties to the United States. He was born in the United States, and his parents and siblings are resident citizens of the United States. He served in the army for 14 years and received an honorable discharge. Fourth, he has visited Ukraine only one time and that was to get married in 2002. Fifth, Applicant has held a security clearance since the middle 1980's, and worked as a security clearance investigator and courier for classified information. Over the course of holding a clearance, there is no evidence indicating that he compromised classified information or had his

clearance revoked, including during the time he was married to his first wife, a German citizen, while living in Germany. Sixth, Ukraine is a democracy that the United States has strongly supported since its independence in 1991. Recently, travel restrictions have eased between the countries, making it easier for citizens to travel and indicating a closer alliance.

As the best predictor of future performance is past performance, Applicant demonstrated a track record of protecting our nation's secrets for the last 25 years, 14 years in the armed forces, and 11 years in the employment by federal contractors. During the course of those years, he has obviously exhibited trustworthiness and reliability, as there is no evidence in the record to the contrary. His heritage and connection to the United States, along with his awareness of security clearance issues and classified information, clearly weigh in his favor. Based on the facts (which are not solely determinative), coupled with the record evidence as a whole, I conclude that he can be expected to resolve any potential conflict of interest in the favor of the United States. Hence, I find Applicant mitigated the security concerns raised by his wife and stepson, who are citizens of Ukraine, residing with him in Germany, his mother-in-law who is a resident citizen of Ukraine, and his travel to the Ukraine 2002, as alleged in SOR ¶¶ 1.a through 1.d. For the reasons stated, I conclude Applicant is eligible for access to classified information. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline B (Foreign Influence) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: 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 Applicant a security clearance. Clearance is granted.

Shari Dam

Administrative Judge