

DATE: August 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-01141

## **DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 46 years old, married with one child, and works for a defense contractor in the computer field. Born in Serbia, he came to the U.S. with his parents at the age of 10. He became a U.S. citizen at 20 years of age. His parents returned to Serbia in 1990 where his mother died, and his father still lives. His father is a U.S. citizen. Applicant inherited a house currently worth \$2,000. Applicant mitigated the foreign influence 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 September 12, 2005, DOHA issued a Statement of Reasons<sup>(1)</sup> (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 September 27, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on February 17, 2006. On April 26, 2006, 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 May 8, 2006.

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated 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 46 years old, married with one child, and works for a computer company that maintains computer systems for government agencies and major corporations. He is a college graduate. Applicant has access daily to sensitive and proprietary corporate information, and maintains a strict confidentiality practice and attitude toward all such information. He has worked for this company since 1985 and never had any security complaints or investigations against him. (Tr. 17, 26, 37; Exhibits 1-3)

Applicant was born in the former Yugoslavia. His parents immigrated to the U.S. from Yugoslavia in 1970 when Applicant was 10 years old. Applicant became a naturalized U.S. citizen in 1980. His wife is a naturalized U.S. citizen who works as a tax accountant. His son is a native-born U.S. citizen. His father became a naturalized U.S. citizen in 1994. His mother never became a U.S. citizen. In Yugoslavia his father was a lawyer, but in the U.S. he worked as a meatpacker. After retiring in 1990, his parents moved back to Yugoslavia where they had a home in Dolovo, and a summer home along the Adriatic coast in the town of Sutomore. His father is now 73 years old. His parents found their U.S. Social Security income from the U.S. allowed them to live in a comfortable lifestyle in Yugoslavia during retirement. His mother died in Yugoslavia in 1991, and his father remarried in 1994. Applicant met his stepmother once, and has no on-going relationship with her. She is a citizen of and resident of Serbia, the former Yugoslavia. When he telephones his father on holidays and birthdays, he never talks to his stepmother. He and his father have a strained relationship. Applicant has six cousins living in Serbia, the former Yugoslavia, but he does not speak to them on a regular basis, the family having disintegrated when the grandmothers and his mother died. They are all citizens of Serbia. (Tr. 9-22, 24, 26; Exhibits 1-3)

Applicant traveled to Yugoslavia in 1991 when he visited his dying mother. Her care in the hospital there, and the poor conditions of the hospital itself, annoyed and disgusted Applicant. He is glad to live in the U.S., and he has no desire to live in or return to Yugoslavia. He is concerned that if he went there for any reason, he might get ill and have to go to one of those hospitals like the one in which his mother died. (Tr. 21, 30; Exhibits 1-3)

Applicant inherited a run-down house in 1994 from his grandmother, located in a town about 30 miles south east of Belgrade, the capital of Yugoslavia. The current market price of the house and small piece of land on which it sits is \$2,000, according to one of Applicant's cousins who lives in the area. Applicant has done nothing with the property, hoping land values increase so he can sell it at a reasonable price. Applicant expressed his clear intention to sell it once the value rises as economic conditions improve. He has not deeded it to his six cousins or his father in Yugoslavia because his relationships with those people are not good. (Tr. 23, 24, 29, 30; Exhibits 1-3)

The Federal Republic of Yugoslavia was formed in 1992 as the successor to the Communist controlled Socialist Federal Republic of Yugoslavia. In February 2003 a new constitution was implemented changing the name of the country to Serbia and Montenegro, the only two constituent republics remaining from the original communist Yugoslavia. Applicant's father's house is in Serbia, and his summer house is in Montenegro. The property that Applicant owns is in Serbia. Montenegro is slightly smaller than Connecticut, and Serbia is slightly smaller than Maine. Together, their land mass was slightly smaller than Kentucky. Montenegro's population is about 650,575 people as of 2002, and Serbia had 7,478,820 in 2002. <sup>(2)</sup> Each has a democratic government, with a president, prime minister, cabinet responsible to its Parliament, and an elected Parliament. In 2002 military expenditures were 3.6% of GDP, and the military services were reforming themselves in a manner that if continued would move them toward closer Euro-Atlantic integration. (Exhibits 4-6)

## 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. May 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 guideline 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

Applicant's father is a U.S. citizen, but resides in Serbia and Montenegro, where he was born, grew up, and lived until 1970. Applicant has no relationship with his stepmother, a Serbian citizen, who lives with his father. Applicant has six Serbian cousins. Disqualifying Condition (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) applies. Furthermore, he owns a small house and land on which the house exists, having inherited it from his grandmother. It is valued today at \$2,000. Because of the run-down condition, as described by Applicant, and I believe his description, I conclude DC 8 (A substantial financial interest in a country that could make the individual vulnerable to foreign influence. E2.A2.1.2.8) does not apply.

Mitigating Conditions (MC )1 (A determination that the immediate family members, (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 E2.A2.1.3.1), and MC 3 (Contact and correspondence with foreign citizens are casual and infrequent E2.A2.1.3.3) apply. Applicant's father is not an agent of a foreign government, being a U.S. citizen and retiree living in his native country. While age is not a deterrent to coercion or exploitation by any foreign power inimical to the U.S., the fact Applicant's father is 73 with retirement homes in a country smaller than Kentucky, and has a poor relationship with his son is persuasive evidence that Applicant cannot be forced to choose between his father and his U.S. job. Furthermore, such a small country, with a small military establishment, and no record of engaging in economic or military espionage against the U.S., is not likely on any level to be in a position to subject Applicant to duress and influence to make him choose between his father and his duty to protect classified information. The casual and infrequent contact referred to in MC 3 applies to Applicant's stepmother (with whom he has no relationship or interaction), and his six cousins, with whom Applicant has little or no contact. At the same time, Applicant has little practical or regular contact with his father.

Applicant has protected confidential and proprietary corporate information in his job for 21 years without incident. He has lived in the U.S. for the past 36 years, has no affection for or connection to Yugoslavia. He would gladly never return after he witnessed the medical care his mother received as she was dying. He is a credible and persuasive witness that there is no potential for foreign influence that could compromise classified information. On a common sense and whole person analysis, Applicant persuaded me the security concern here is non-existent and therefore, I conclude this security concern 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

### **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).

2. As a historical note, subsequent to the hearing, Montenegro seceded from this federal union after holding a referendum, and became an independent state on June 3, 2006. The SOR refers to Serbia and Montenegro when they were one country with a dual name. Now they are two independent countries, as they were before World War I.