

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant holds an active Romanian passport and is reluctant to renounce her Romanian citizenship. Her brother, mother-in-law, two sisters-in-law, and aunt are citizens and residents of Romania. Her mother is a citizen of the Romania and a permanent resident of the U.S., but she visits Romania with Applicant's school-age son for 3-4 months each summer. Security concerns based on foreign preference and foreign influence are not mitigated. Clearance is denied.

CASENO: 05-01370.h1

DATE: 01/26/2006

DATE: January 26, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-01370

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT<sup>(1)</sup>**

*Pro Se*

**SYNOPSIS**

Applicant holds an active Romanian passport and is reluctant to renounce her Romanian citizenship. Her brother, mother-in-law, two sisters-in-law, and aunt are citizens and residents of Romania. Her mother is a citizen of the Romania and a permanent resident of the U.S., but she visits Romania with Applicant's school-age son for 3-4 months each summer. Security concerns based on foreign preference and foreign influence are not mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On August 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 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). The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence).<sup>(2)</sup> Under Guideline C, the SOR alleges Applicant holds an active Romanian passport (¶ 1.a.); she is unwilling to renounce her Romanian citizenship because it offers health care benefits for her son in Romania (¶ 1.b.); and she exercised Romanian citizenship by obtaining dental care while visiting Romania in April 2002 (¶ 1.c.). Under Guideline C, the SOR alleges Applicant's mother is a citizen and resident of Romania who also periodically resides in the U.S. (¶ 2.b.); and her brother, parents-in-law, two sisters-in-law, and her aunt are citizens and residents of Romania (¶¶ 2.a., 2.c., 2.d., and 2.e.).

Applicant answered the SOR in writing on September 13, 2005. Under Guideline C, she admitted the allegation in SOR ¶ 1.a. but denied the allegations in ¶¶ 1.b. and 1.c. Under Guideline B, she admitted all the allegations but explained that her mother (¶ 2.b.) has obtained a green card and "resides in the United States and periodically in Romania." She also pointed out her father-in-law (¶ 2.c.) is dead.<sup>(3)</sup> She elected to have the case decided on the written record in lieu of a

hearing. Department Counsel submitted the government's written case on October 26, 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on October 28, 2005 and responded on December 4, 2005. The case was assigned to me on December 9, 2005.

### **FINDINGS OF FACT**

Based on the entire record, I make the following findings of fact:

Applicant is a 48-year-old quality inspector for a defense contractor. She has worked for her current employer since October 2003. She has never held a security clearance.

Applicant and her spouse were born, raised, and married in Romania.<sup>(4)</sup> They fled from Romania in 1980 because of its oppressive Communist government, and went to Greece as refugees. After seven months in Greece they chose to immigrate to the U.S. Applicant became a naturalized U.S. citizen in July 1987, and her spouse became a U.S. citizen in October 1988.<sup>(5)</sup> They have a son, born in the U.S., who is about 8 years old.

Applicant's father is deceased. Her mother is a citizen of Romania who resides in the U.S. for about eight months each year, holds permanent resident alien status, and cares for Applicant's son during the school year. Her mother spends the summer traveling in Romania with Applicant's son.<sup>(6)</sup>

Applicant's brother, two sisters, mother-in-law, and aunt are citizens and residents of Romania.<sup>(7)</sup> Her brother is a mechanical engineer involved in designing hydroelectric plants, and his wife is a chemical engineer who tests food products for the Romanian government. She has weekly e-mail contact with her brother as well as weekly telephone contact during the summer months when her mother and son are visiting. The rest of her immediate family are retired.<sup>(8)</sup>

A sister of Applicant's spouse owns a drugstore in Romania. The record contains no information about Applicant's mother-in-law or her aunt, except for the fact that her aunt lived with her father and cared for him until he died. She told a security investigator she has no contact with anyone in Romania except her immediate family.<sup>(9)</sup>

Applicant obtained a Romanian passport in January 2003. In an interview with a security investigator, she stated she obtained it as "a novelty" and "something of a whim." She also holds a U.S. passport, which she used to travel to Romania and other countries in 1995 and 2002, after she obtained the Romanian passport. She told the security investigator she has never used to Romanian passport, and she would be willing to surrender it "should that be a requirement of my clearance." [\(10\)](#)

Applicant also told the investigator she was not sure she would renounce her Romanian citizenship because it provides health care benefits for her son. She stated a renunciation of her Romanian citizenship would require some thought, and she could not make the decision at the time of the interview. [\(11\)](#)

Romania is a democracy with an elected president, a two-chamber parliament, and an independent judiciary. Since the 1989 revolution, it has actively pursued a policy of strengthening ties with the West, especially the U.S. and the European Union. It has participated in several peacekeeping operations and was the first country to enroll in the NATO Partnership for Peace program. NATO invited Romania to become a member in 2002, and it officially joined the organization in March 2004. In January 2004, Romania began a two-year term as an elected member of the United Nations Security Council. [\(12\)](#) The U.S. and Romania are actively cooperating in securing the Black Sea region. [\(13\)](#)

Romania has a market economy that has been in transition since the 1989 revolution. Economic crimes against tourists, although usually non-confrontational and non-violent, are a problem. [\(14\)](#)

Romania has a generally good human rights record. However, there have been problems with police abuses, restrictions on freedom of speech and the press, and harassment of minorities. [\(15\)](#)

## **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 with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. 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 Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

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, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 ¶¶ E2.2.1.1 through E2.2.1.9.

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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ 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 security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## **CONCLUSIONS**

### **Guideline C: Foreign Preference**

When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1. A disqualifying condition may arise if an individual exercises dual citizenship (DC 1), possesses or uses a foreign passport (DC 2), or accepts "educational, medical, or other benefits, such as retirement or social welfare, from a foreign country" (DC 4). Directive ¶¶ E2.A3.1.2.1., E2.A3.1.2.2., E2.A3.1.2.4.

Applicant exercised her dual citizenship by obtaining a Romanian passport after she became a naturalized U.S. citizen. Accordingly, I conclude DC 1 is established. Although the evidence shows she has never used her Romanian passport, her possession of an active foreign passport establishes DC 2.

Applicant admitted she obtained dental work in Romania while visiting her father in March 2002. The record does not indicate, however, whether her dental work was a citizenship-based entitlement, an entitlement based on her father's citizenship, or a service available to citizens as well as foreigners. I conclude the dental work, standing alone, does not establish DC 4, and I resolve SOR ¶1.c. in her favor.

The record does indicate, however, that Applicant is unwilling to renounce her Romanian citizenship because it entitles her 8-year-old son to health care benefits. There is no evidence that any benefits have actually been received, but her reluctance to relinquish those benefits tends to show foreign preference, even though it does not fall within the specific terms of DC 4.

Several mitigating conditions are relevant. MC 1 applies if dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1. MC 1 is established, because Applicant did not affirmatively seek foreign citizenship, but acquired it by virtue of her birth in Romania to Romanian parents.

When possession or use of a foreign passport is involved, the clarifying guidance issued by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (the "Money Memorandum"), dated August 16, 2000, requires denial of a clearance unless the applicant surrenders the foreign passport or obtains official approval for its use from the U.S. government. Applicant received a copy of the Money Memorandum in the FORM, [\(16\)](#) but she produced no evidence of compliance.

Willingness to renounce dual citizenship is a mitigating condition (MC 4). Directive ¶ E2.A3.1.3.4. MC 4 is not established, because Applicant has declined to renounce her Romanian citizenship.

After weighing the disqualifying and mitigating conditions and considering all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on foreign preference.

### **Guideline B: Foreign Influence**

A security risk may exist when an applicant's immediate family, or other persons to whom he or she 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. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], 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." Directive ¶ E2.A2.1.2.1.

SOR ¶ 2.b. alleges Applicant's mother is a citizen and resident of Romania, but it is refuted in part, because the evidence shows her mother is a citizen of Romania and a permanent resident of the U.S. SOR ¶ 2.c. alleges her parents-in-law are citizens and residents of Romania, but it is refuted in part because the evidence shows her father-in-law is dead.

"[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). Applicant has stated she has contact with only her immediate family, but she has not addressed her ties of obligation, if any, to her mother-in-law. Thus, the presumption of ties of obligation to her mother-in-law is not rebutted.

I conclude DC 1 is established. Applicant's mother is a citizen of Romania who is present in Romania for 3-4 months each year, her son is present in Romania for 3-4 months each year, and her brother and mother-in-law are citizens and residents of Romania.

A disqualifying condition (DC 3) may arise if an individual has relatives "who are connected with any foreign government." Directive ¶ E2.A2.1.2.3. I conclude DC 3 is established, because Applicant's sister-in-law is employed as a chemical engineer by the Romanian government.

Since the Government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. In cases where an applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members, 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." Directive ¶ E2A2.1.3.1. Notwithstanding the facially disjunctive language of MC 1("agents of a foreign power **or** in a position to be exploited"),

it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Although Romania is friendly to the U.S., the distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). We also know countries with stable, democratic governments and good human rights records engage in intelligence gathering. *See* ISCR Case No. 02-22461 at 5 (App. Bd. Oct. 27, 2005). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

The nature of Romania's government, its human rights record, and its relationship with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether Romania would risk damaging its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray the U.S.

None of Applicant's immediate family members are agents of a foreign power under either the statutory definition in 50 U.S.C. 1801(b) or the broader definition apparently adopted by the Appeal Board. *See* ISCR Case No. 02-24254, 2004 WL 2152747 at \*4-5 (App. Bd. Jun.29, 2004) (employee of foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of MC 1). Her brother works for a major industry susceptible to involvement in industrial espionage, and her sister-in-law appears to be connected to the government as an employee. She has frequent contact with her brother, a citizen and resident of Romania, and her mother, a permanent resident of the U.S. who spends her summers in Romania. She is unwilling to renounce her Romanian citizenship because it affords medical benefits to her son while he spends his summers in Romania.

None of the individual family circumstances discussed above are determinative. The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Considering her family ties individually as well as in totality, it is clear she has significant family



connections to Romania, and her family has connections to Romanian industry and government.

Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). I conclude she has not carried her burden of establishing MC 1.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. The record reflects Applicant visited her aunt once in 2002, but she now has contact only with her immediate family. Thus, MC 3 is established in part with respect to her in-laws and her aunt, but not with respect to her mother and brother.

After weighing the disqualifying conditions and mitigating conditions and considering all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on foreign influence.

### **FORMAL FINDINGS**

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline C (Foreign Preference): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. Applicant's first name is misspelled in the SOR but is correctly spelled in this decision.
2. FORM Item 1.
3. FORM Item 3.
4. FORM Item 4 at 1, 3
5. FORM Item 5 at 1-2.
6. FORM Item 3; FORM Item 5 at 5.
7. Form Item 3.
8. FORM Item 5 at 7.
9. *Id.* at 6-7.

10. *Id.* at 2-4.

11. *Id.* at 6-7.

12. U.S. Dept. of State, *Background Note, Romania* 1, 6-7, 10 (Aug 2005), marked as FORM Item 9.

13. U.S. Embassy Press Release, Bucharest, Romania (Apr. 20, 2005), enclosure 2 to Applicant's Response to the FORM; CNN News Release (Dec. 2, 2005), available at [www.cnn.com/2005/WORLD/12/02/romania.usbases.reut](http://www.cnn.com/2005/WORLD/12/02/romania.usbases.reut), submitted as enclosure 4 to Applicant's Response to the FORM.

14. U.S. Dept. of State, *Consular Information Sheet, Romania* 1-2 (Apr. 12, 2005), marked as FORM Item 8.

15. U.S. Dept. of State, *Country Reports on Human Rights Practices, Romania* 1 (Feb 28, 2005), marked as FORM Item 10.

16. FORM Item 6.