

DATE: December 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-02301

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has renounced his Slovenian citizenship, and has surrendered his Slovenian passport in Compliance with the *Money Memorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000). He was born in the U.S. to foreign nationals, but returned to the former Yugoslavia as an infant. He served in the Yugoslav army from 1989~1990, and returned to the U.S. in 1995. The Applicant's Serbian mother and his Slovenian father reside in Belgium. His grandparents and an uncle reside in Slovenia. An aunt resides in Serbia and Montenegro. The Applicant is not subject to coercion vis-a-vis any of these foreign relatives. All of his foreign travels, save one trip in 1995, were with a U.S. passport. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On August 25, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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.

Applicant filed an Answer to the SOR on September 8, 2005.

The case was received by the undersigned on September 28, 2005. A notice of hearing was issued on October 12, 2005, and the case was heard on November 16, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who called two witnesses to testify, and also submitted documentary evidence on his own behalf. The transcript (TR) was received on November 30, 2005. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations, except for subparagraph 1.a., in that he denies ever being a citizen of Serbia and Montenegro.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 35 years of age, has a Ph.D. from an American university, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

The Applicant was born in the U.S. to foreign nationals, but returned to the former Yugoslavia as a two week old infant (TR at page 22 lines 1~20, and at page 24 lines 9~17). He returned to the U.S. in 1995 (*Id*).

1.a.~1.g. and 2.h. The Applicant has renounced his Slovenian citizenship, and has surrendered his Slovenian passport in Compliance with the *Money emorandum* (Applicant's Exhibits A and B). [He is not now nor ever has been a citizen of Serbia and Montenegro.] He served in the Yugoslav army from 1989~1990, attended college in Yugoslavia, and returned to the U.S. in 1995 (TR at page 13 lines 13~19, at page 24 lines 1~8, and Government Exhibit 1 at page 3). In 1995, the Applicant used a Yugoslav passport to travel to the former Yugoslavia.

Guideline B - Foreign Influence

2.a.~2.g. The Applicant's Serbian mother and his Slovenian father reside in Belgium (TR at page 16 line 17 to page 17 line 15, at page 24 lines 18~23, at page 35 line 15 to page 36 line 7). His father is a physicist, and his mother worked in "a clerical position" (TR at page 36 lines 13~15). Neither parent has any connection with any foreign government (TR at page 42 line 5~7). The Applicant's grandparents and an uncle reside in Slovenia (TR at page 31 line 13 to page 32 line 11, and at page 32 line 15 to page 33 line 24). His grandparents are in their 90s, and his uncle is also a physicist (*Id*). An aunt resides in Serbia and ontenegro (TR at page 26 line 25 to page 28 line 13). The Applicant also has a Serbian friend who lives in the U.S., and who is seeking permanent resident status (TR at page 16 lines 3~11, and at page 28 line 14 to page 29 line 2). Except for a trip to the former Yugoslavia in 1995, all of his foreign travels were with a U.S. passport (TR at page 29 line 23 to page 20 line 1, and at page 33 line 25 to page 34 line 15).

Mitigation

Two of the Applicant's colleagues testified in his behalf (TR at page 44 line 3 to page 48 line 20, and at page 50 line 4 to page 51 line 2). Both would recommend the Applicant for a position of trust without reservation (*Id*).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to a Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant was a dual national with Slovenia, and until recently maintained a Slovenian passport. The first and second disqualifying conditions under Foreign Preference are therefore applicable as there was an "exercise of dual citizenship," with the "possession . . . of a foreign passport." This is countered, however, by his compliance with both the last mitigating condition, when he renounced his Slovenian citizenship; and by his compliance with the *Money emorandum*, when he surrendered his Slovenian passport. As to his service in the army of the former Yugoslavia, he was drafted into the army of a country that no longer exists. He has absolutely no allegiance to the former Yugoslavia or to its successor states. Mitigation is shown. Guideline C is found for the Applicant.

The Applicant's foreign relatives reside in Belgium, Slovenia, and Serbia and Montenegro. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of, or resident or present in, a foreign country." However, these relatives are not connected with any government, and there is no evidence that their presence in Belgium, Slovenia, and Serbia and Montenegro can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 38 line 7 to page 39 line 19). The first mitigating condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Mitigation is again shown. Guideline B is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the Applicant.

h. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge