

DATE: July 14, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-02714

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARC E. CURRY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward Loughran, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a naturalized U.S. citizen originally from the former Yugoslavia whose relationship with several foreign relatives posed a security concern that he mitigated at the hearing. Clearance is granted.

### **STATEMENT OF THE CASE**

On November 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR alleged a security concern under Guideline B, foreign influence.

Applicant answered the SOR on December 1, 2005, admitting all of the allegations and requesting a hearing. The case was assigned to me on January 20, 2006. On February 13, 2006, I scheduled a hearing for March 14, 2006. It was held as scheduled. At the hearing, the government provided three exhibits, and Applicant provided seven exhibits in addition to the testimony of one witness. I took administrative notice of three additional documents as follows: U.S. Department of State Background Note on Bosnia and Herzegovina, dated August 2005, U.S. Department of State Background Note on Croatia, dated August 2005, and U.S. Department of State Background Note on Serbia and Montenegro, dated December 2005. I marked them as Government's Exhibits 4 through 6, respectively. DOHA received the transcript on March 23, 2006.

### **FINDINGS OF FACT**

Applicant is a 33-year-old married man with one child. He worked as a contract linguist for the U.S. Army in support of its mission in Kosovo from November 2003 through November 2005. He is a native of the former Yugoslavia.

Applicant immigrated to the U.S. in 1994, and became a naturalized citizen in 2001. <sup>(2)</sup> He finished high school and has taken some college courses both in the former Yugoslavia and in the U.S.

In June 2004, Applicant married a native of Bosnia and Herzegovina. It was his intention to bring her to the U.S. at that time; however, she was unable to travel because of medical problems related to a difficult pregnancy.<sup>(3)</sup> Their son was born approximately six months later. Their son also had medical problems that precluded him from traveling to the U.S. Applicant obtained U.S. citizenship for his son immediately after his birth.<sup>(4)</sup> Shortly after obtaining medical clearance in May 2005, Applicant's wife and child moved to the U.S. She subsequently obtained permanent residence status.<sup>(5)</sup>

Applicant's father is a naturalized U.S. citizen living in the U.S. His mother and stepfather live in Croatia. They earn income from fishing, farming, and seasonal tourism.<sup>(6)</sup> They also provide full-time care to Applicant's maternal grandparents who live with them.<sup>(7)</sup>

Applicant has a close relationship with his mother and stepfather. From 1996 to 2003, he vacationed in Croatia every summer, and visited them on each trip.<sup>(8)</sup> After moving to Kosovo in November 2003 to support the U.S. Army as a translator, his visits increased. Between 2004 and 2005, he visited them approximately 12 times. Currently, he talks to them twice a month. Occasionally he will talk to his grandparents when he calls his parents.

Applicant's paternal grandparents are citizens and residents of Serbia and Montenegro. They live with his aunt, a psychologist at a local public school, who provides full-time care for them, and his cousin, an employee of an American-owned company. He talks with her approximately once per week, and will sometimes talk to his grandparents during these conversations. His contact with his cousin is rare.<sup>(9)</sup>

Applicant's mother-in-law, father-in-law, and sister-in-law are citizens and residents of Bosnia and Herzegovina. He became acquainted with them in January 2004 after becoming engaged to his wife who was living with them at the time. By the time his wife moved from their home in May 2005, he had visited them approximately six times. These trips coincided with the trips he took to visit his parents in Croatia. He has not seen his in-laws since his wife moved from their home, and has only talked to them twice since his wife emigrated to the U.S.<sup>(10)</sup>

Applicant is half Serbian and half Croatian. As the former Yugoslavia became more ethnically polarized in the early 1990s, he increasingly experienced discrimination.<sup>(11)</sup> Because of his experience in his native country, Applicant has a strong sense of appreciation for the United States. When asked at the hearing why he decided to become a U.S. citizen, he responded:

It's incredible. [The] United States saying, okay, forget about what's happening over there, forget about who you are, who you were; if you want, this is what you can be. And what you can be in the States is anything and everything you want.<sup>(12)</sup>

He has no financial interests in the Former Yugoslavia and has no intentions of returning to live.<sup>(13)</sup>

Applicant possesses a comprehensive knowledge of Yugoslavian culture and the various regional dialects of the Yugoslavian language that has enabled him to perform his job as a translator in an exemplary manner. He went "above and beyond his duties in helping the team learn more about the area and culture of the Balkans."<sup>(14)</sup> While working in Kosovo, he received three certificates of appreciation from his employer and two from the Army.<sup>(15)</sup> The Army staff with whom he worked considered him "more than just an interpreter, but an integral part of the team."<sup>(16)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information, and Mitigating Conditions (MC) that may be considered in deciding whether to grant an individual's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the

complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

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:

**Foreign Influence - Guideline B:** 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 or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The pertinent disqualifying and mitigating conditions are discussed in the conclusions below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest." <sup>(17)</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### CONCLUSIONS

Applicant's wife is a citizen of Bosnia and Herzegovina, and his mother is a citizen of Croatia. DC 1 <sup>(18)</sup> applies. Over the years, he exhibited close ties of affection to several extended family relatives who are citizens and relatives of the former Yugoslavia, including both sets of grandparents, his aunt, a cousin, and his stepfather. Applicant has not visited any of these extended relatives except for his stepfather in more than a year, and seldom communicates with them. These extended family relationships are no longer sufficiently close enough to generate a security concern. Conversely, Applicant has a close relationship with his stepfather with whom he talks approximately every time he talks to his mother. DC 1 applies to this relationship.

Applicant's in-laws live in Bosnia and Herzegovina. His contact with them has gradually decreased since his wife moved to the U.S. Currently, he only talks to them in passing when they call for his wife. Although he successfully proved at the hearing that he does not have close ties of affection or obligation to them, the potential for foreign influence or duress exists through their close relationship to his wife. DC 2-~~(19)~~ applies.

I have considered all of the mitigating conditions and conclude none apply. The absence of any mitigating conditions, however, is not solely dispositive of a case, and does not preclude a judge from making a favorable decision in a case. ~~(20)~~ Applicant's security clearance eligibility must ultimately be evaluated in terms of the whole person concept and the general factors set forth in the Directive. ~~(21)~~

Applicant has no financial interests in the former Yugoslavia. Although he has family members in the former Yugoslavia, his closest family members, his wife and child, live in the U.S. with him. Because Applicant immigrated to escape the atmosphere of fear and discrimination in the former Yugoslavia, the strength of his ties to, and appreciation for the U.S. is magnified. He also possesses a strong sense of civic obligation toward the U.S. for allowing him to become a naturalized citizen. These factors motivated him to support the U.S. mission in Kosovo as a translator. Under these circumstances, the potential vulnerability to foreign influence has now become diminished to the point where it is no longer a security concern. Applicant has mitigated the Guideline B security concern.

### **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:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: 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 Applicant. Clearance is granted.

Marc E. Curry

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Exhibit 2, Counterintelligence and Security Screening Questionnaire, dated July 11, 2003, at 4.
3. Tr. at 19.
4. Tr. at 20.
5. Tr. at 19.
6. Tr. at 31.
7. Answer to SOR, dated December 1, 2005, at 3.
8. Tr. at 52.
9. Tr. at 58.
10. Tr. at 59.
11. Tr. at 44.
12. Tr. at 45.
13. Tr. at 37.
14. Exhibit D, Performance Evaluation, dated August 31, 2005, at 2.
15. Certificates of Appreciation covering the periods of September 2004 through November 2004, December 2004 through February 2005, and January 2005 through October 2005, as listed in Exhibit E; U.S. Army Certificate of Appreciation (undated), as included in Exhibit E at 1, and Multi-National Brigade Certificate of Appreciation (undated), as included in Exhibit E at 5.
16. Exhibit A, Recommendation Letter from Army Sergeant Team Leader, dated November 18, 2005.
17. *See generally*, Directive, Sec. 2.3., Sec. 2.5.3., Sec. 3.2., and Sec. 4.2.
18. 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.
19. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.
20. ISCR Case No. 03-12882, (App. Bd. July 20, 2005), at 5-6.
21. *Id.*