

DATE: December 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03063

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's father and brother are residents of Kosovo. His close familial ties to residents of Kosovo raise serious security concerns because they could be exploited by individuals hostile to the U.S. and could result in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 30, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing July 23, 2005, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on September 8, 2005. The FORM contained documents identified as Items 1 through 8. By letter dated September 22, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant submitted additional information which was received on October 25, 2005. Department Counsel did not object to Applicant's submissions. On December 6, 2005, the case was assigned to me for a decision.

RULINGS ON PROCEDURE

In his response to the SOR, Applicant disputed allegation 1.a., which read: "Your parents and brother are citizens and residents of Serbia and Montenegro." Applicant stated his mother had died in July 2004. He did not dispute that his father and brother were residents of Kosovo, but he questioned whether they were citizens of Serbia and Montenegro. Department Counsel, not wishing to argue international law on the status of Kosovo, moved to amend allegation 1.a. to read: "Your father and brother are residents of Kosovo." (FORM, at IV. Argument) Applicant did not object to Department Counsel's proposed amendment, and, accordingly, it was granted.

FINDINGS OF FACT

The SOR contains two allegations of disqualifying conduct alleged under Guideline B, Foreign Influence. (Item 1.) In his answer to the SOR, Applicant denied in part and admitted in part one allegation. He denied the second allegation. (Item 2.) His admission is incorporated as a finding of fact.

Applicant, a 53-year-old linguist, is employed by a defense contractor. He was born in Kosovo, in the former Federal Republic of Yugoslavia. (3)

From March 1978 to March 1979, Applicant served obligatory military duty in the Yugoslav navy. In 1980, he received a diploma in economics from a university in Yugoslavia. He immigrated to the U.S. in 1989, and was married to a U.S. citizen in 1990. In 1996, he was divorced. He became a U.S. citizen in 1996.

Applicant's parents and one of his two brothers were residents of Kosovo. (4) The parents and the brother were displaced by the Serbian military campaign in Kosovo in 1998 and 1999 and lived for two years in Serbia and Montenegro. While they were refugees, Applicant's parents had no income. During that time, Applicant provided his parents with approximately \$200 a month in support. (Item 3.)

In 2001, Applicant's parents and brother returned to Kosovo. Applicant's mother died in Kosovo in July 2004. Applicant's father, who is 86 years old, receives a pension and refugee aid. He resides in an assisted living facility in Kosovo. Applicant's brother works as a bartender in a restaurant in Kosovo. When his family returned to Kosovo in 2001, Applicant discontinued his monthly monetary support of them. Applicant no longer provides his family with support. (Item 3; Response to FORM, at 1.)

In his response to the FORM, Applicant submitted several documents attesting to his skill and ability as a linguist and translator.

I take administrative notice of a document entitled "Serbia and Montenegro (Former Yugoslavia, Federal Republic of), " a Consular Information Sheet compiled by the Bureau of Consular Affairs, U. S. Department of State. (Item 6.) The Consular Information Sheet on Serbia and Montenegro states that Kosovo remains unstable politically and economically. High unemployment and other economic factors in Kosovo have encouraged criminal activity. The country operates on a cash economy and crime against foreigners, who are presumed to have cash, is a serious problem. In March 2004, inter-ethnic violence in Pristina resulted in 20 deaths, hundreds of injuries, and the displacement of approximately 4,000 people. For protection and information in case of an emergency, Americans living or traveling in Kosovo are encouraged to register with the nearest U. S. embassy or consulate. Americans are also advised to avoid demonstrations and crowds while in Kosovo, since the possibility of inter-ethnic violence remains high.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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).*

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.*

CONCLUSIONS

In the amended SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's father and brother are residents of Kosovo (¶ 1.a.) and that Applicant provided his parents in Serbia and Montenegro with \$200 a month in support (¶ 1.b.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that Kosovo's political and economic instability has provided a venue for criminals and other opportunists whose interests may be hostile to those of U.S. citizens. American citizens with immediate family members who are residents of Kosovo could be vulnerable to coercion, exploitation, or pressure.

Applicant admits his father and brother are residents of Kosovo. He admits he provided his family with monetary support while they were refugees in Serbia and Montenegro, but he denies providing support to his parents after they returned to Kosovo in 2001. Applicant's admissions raise security concerns under Guideline B, subparagraph E2.A2.1.2.1. Applicant's father and brother are residents of Kosovo. These facts could make Applicant vulnerable to coercion, exploitation, or pressure by hostile or criminal elements who cannot be monitored or controlled by a weak and unstable government.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. Mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's father and brother are agents of a foreign power, they are residents of a region which has an uncertain political status and economic future, and they could be exploited by individuals in the region in a way that could force Applicant to choose between loyalty to his family members and the United States. (*ISCR Case No. 02-13595*, at 4-5 (*App. Bd. May 10, 2005*)) Accordingly, MC E2.A2.1.3.1 applies only in part to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contact and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's contacts with his family members who are residents of Kosovo are based on ties of familial affection or obligation and are, therefore, not casual. Accordingly, MC E2.A2.1.3.3 does not apply to Applicant's relationships with his father and brother.

Nothing in Applicant's answers to the SOR suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns discussed herein and

demonstrate that he would not be vulnerable to foreign influence that could result in the compromise of classified information. Accordingly, the allegation in subparagraph 1.a. under Guideline B of the SOR is concluded against the Applicant. The allegation in subparagraph 1.b. is concluded for the Applicant, since his monetary support for his family ceased in 2001.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

DECISION

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

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Although Kosovo is legally a part of Serbia and Montenegro, since 1999 it has been an international protectorate of the United Nations, pursuant to U.N. Security Council Resolution 1244 (June 10, 1999). *See* Item 7, at 6: "Background Note: Serbia and Montenegro," Bureau of European and Eurasian Affairs, U.S. Department of State, December 2004.
4. Applicant's second brother is identified as a citizen of Yugoslavia and a resident of France. (Item 4.)