

KEYWORD: Foreign Influence

DIGEST: Applicant is a 34-year-old pharmacy technician who came to the United States from Bulgaria in 1990, and became a naturalized citizen in 2003. She met her Iraqi fiancé on the internet in 2004, visited him for one week in Syria, where he resides, and they became engaged. She has very little concrete information about his background or his family, who are citizens and residents of Iraq. His engagement visa was denied by the United States. They intend on marrying in Bulgaria in the summer of 2006. Applicant failed to mitigate the trustworthiness concerns regarding foreign influence; therefore, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

CASE NO: 06-02072.h1

DATE: 06/21/2006

DATE: June 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 06-02072

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 34-year-old pharmacy technician who came to the United States from Bulgaria in 1990, and became a naturalized citizen in 2003. She met her Iraqi fiancé on the internet in 2004, visited him for one week in Syria, where he resides, and they became engaged. She has very little concrete information about his background or his family, who are citizens and residents of Iraq. His engagement visa was denied by the United States. They intend on marrying in Bulgaria in the summer of 2006. Applicant failed to mitigate the trustworthiness concerns regarding foreign influence; therefore, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

STATEMENT OF THE CASE

On April 26, 2004, Applicant submitted an application for a position of public trust-an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). (1) On arch 13, 2006, under the applicable Executive Order (2) and Department of Defense Directive, (3) 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 on April 4, 2006, and elected to have a hearing before an administrative judge. In her Answer, Applicant admitted all of the allegations under Guideline B. The case was assigned to me on May 1, 2006. A notice of hearing was issued on May 18, 2006, scheduling the hearing for June 8, 2006. I conducted the hearing as scheduled. The Government offered eight exhibits for admission in the record and they were marked as Government Exhibits (GE) 1-8. The exhibits were admitted into evidence without objection. Applicant testified on her own behalf and offered four exhibits for admission to record. They were marked as Applicant's Exhibits 1-4 and were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 20, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 34-year-old pharmacy technician who immigrated to the U.S. in 1990 from Bulgaria. In 2003, she became a U.S. naturalized citizen. Her parents have visited her for the past four years in the U.S., are retired, and plan on returning to Bulgaria in June 2006.⁽⁴⁾ She has a brother who is a naturalized citizen of the U.S., is married and lives in another state. Applicant was married in 1994 and divorced in 2000. She has no children.

In 2003, Applicant began corresponding by email through an internet chatroom with a man who is a citizen of Iraq and a resident of Syria.⁽⁵⁾ He fled with his sister from Iraq in 2002 to Syria where they now both reside.⁽⁶⁾ His parents are citizens and residents of Iraq. After corresponding with each other by email for approximately one year, in 2004, Applicant accepted the man's offer to visit him in Syria.⁽⁷⁾ She visited him for about a one week. During her visit he proposed marriage to her and they became engaged.⁽⁸⁾ They intend to marry in Bulgaria in the summer of 2006.

Applicant applied for an "engagement" visa for her fiancé in April 2004. It was denied approximately one month later by the U.S. State Department.⁽⁹⁾ Neither she or her fiancé know the reasons for the denial and are waiting to hear from the Department of Immigration for an explanation.⁽¹⁰⁾ The application is still pending. Applicant's fiancé is a Christian from the Assyrian tribe. Assyrian Christians are a minority in Iraq, and have been persecuted in the past.⁽¹¹⁾ The fiancé's family was subjected to harsh treatment under the former Iraqi regime. He works in a factory making boxes, but is trained in computer engineering. His sister stays at home and cares for her brother.⁽¹²⁾ Applicant has no other information about her fiancé's sister and does not know what she will do when they marry and he moves. The fiancé sends support to his family in Iraq.⁽¹³⁾ The fiancé has a younger brother who is married, but Appellant does not know what type of work he does.⁽¹⁴⁾ She also does not know what occupations her fiancé's father or mother have or any other information about his background or his family. She does know that the living conditions for his relatives in Iraq are very bad and unsafe. She does not believe her fiancé or his family members are affiliated with any terrorist organizations.⁽¹⁵⁾ She does not believe he is using her to gain entry to the U.S.⁽¹⁶⁾ She does not know what will happen to her fiancé's sister if he leaves. She plans on supporting him if he gains entry to the U.S. until he has permission to work. She does not know what she will do if she marries him and he cannot obtain a visa for entry into the U.S.⁽¹⁷⁾ She does not plan on leaving the U.S.

Applicant provided character letters that attest to her pride in being a U.S. citizen and her loyalty to the country. She is considered upstanding and forthright. She is a valued employee who is considered hard working, and honest, with a high moral character.⁽¹⁸⁾

The Iraqi government is a transitional democracy following elections held in January 2005.⁽¹⁹⁾ It is still a developing democracy and is dealing with many issues. The risk of terrorism directed against citizens of the United States in Iraq and is extremely high.⁽²⁰⁾ "Remnants of the former Baath regime, transnational terrorist, and criminal elements remain active throughout Iraq."⁽²¹⁾ The security environment across the country is volatile, dangerous, and unpredictable.⁽²²⁾ The Department of State strongly warns U.S. citizens against traveling to Iraq.⁽²³⁾ U.S. citizens have been targeted, kidnaped, used for extortion and murdered by terrorist in Iraq.⁽²⁴⁾ Attacks against civilians have targeted humanitarian workers and there continue to be planned and random killings as well as extortions.⁽²⁵⁾

Syria is an authoritarian regime and the people do not have a right to change their government.⁽²⁶⁾ Political opposition is not tolerated and there is a very limited degree of public accountability.⁽²⁷⁾ Syria has been on the U.S. list of state sponsors of terrorism since the list's inception in 1979.⁽²⁸⁾ Syria continues to support and provide safe haven for terrorist organizations.⁽²⁹⁾

POLICIES

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."⁽³⁰⁾ The President provided that eligibility for access to classified information shall be granted only 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."⁽³¹⁾

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security."⁽³²⁾ The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽³³⁾ The adjudicative guideline at issue in this case is:

Foreign Influence-is a concern because 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: (1) not citizen so the United States or (2) 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 adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽³⁴⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³⁵⁾ An administrative judge should consider the following factors: (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 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.⁽³⁶⁾

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made.⁽³⁷⁾ Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁽³⁸⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽⁴⁰⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽⁴¹⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant.⁽⁴²⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline B.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI 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*) applies. Applicant's fiancé is a citizen of Iraq, living in Syria. She is engaged to be married to him in the summer of 2006. His parents and brother are citizens and residents of Iraq. His sister is a resident of Syria. Applicant has close ties of affection to her fiancé. There is a rebuttable presumption that a person has close ties of affection for, or obligation to, the immediate family members of the person's spouse.⁽⁴³⁾ In this case although she is not yet married, her ties with her fiancé should include his family because there is a vulnerability and potential for influence of Applicant through her fiancé and his family.

I have considered all the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI MC) 1 (*A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk*) and FI MC 2 (*Contacts and correspondence with foreign citizens are casual and infrequent*). Applicant is obviously very close to her fiancé and her contacts with him are frequent and more than casual. She does not know much about his background or his family, which is problematic and one must err on the side of caution. He has told her he works in a box factory, but she has only seen him for one week while in Syria. She has very little first hand observation or knowledge about him, his family, their backgrounds and other pertinent information. He was denied an engagement visa and the reason is unknown. The only other information that was provided was that she became acquainted with him over the internet, visited him for one week, and intends on marrying him and bring him to the U.S. He sends his family money and lives with his sister, so he has more than casual and infrequent contact with his family. Applicant is bound by affection to her Iraqi fiancé. He lives in a country that sponsors terrorism. He is a citizen of Iraq and although the new government of Iraq is still in its infancy, there are serious terrorist activities, factions, and organizations in that country that are committed to its ruin. The risks against Americans or anyone with ties to Americans is very serious and very real. The kidnaping of people who in anyway could benefit the extortionists is a common occurrence, and, despite the loyalty of the person, it is a risk too great to overcome under the circumstances. There is an unacceptable security risk that Applicant will be exploited, either through her fiancé or his family. FI C 1 and FI MC 2 do not apply. Applicant has failed to mitigate the trustworthiness concerns.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. Applicant's loyalty to the United States and her pride in being a naturalized citizen are not in question. However, her close ties with foreign citizens under the circumstances presented constitute an unacceptable security risk. I am persuaded by the totality of the evidence that it is not

clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Accordingly, Guideline B is decided against Applicant.

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 AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

DECISION

In light of all the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960 as amended.
2. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.
3. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
4. Tr. 24-26.
5. Tr. 27-30.
6. Tr. 44.
7. Tr. 18.
8. Tr. 18, 33
9. Tr. 19.
10. Tr. 36-40.
11. Tr. 41-43.
12. Tr. 45
13. Tr. 46.
14. Tr. 45.
15. Tr. 46.
16. Tr. 47.
17. Tr. 57.
18. AE 2-4.
19. U.S. Department of State Consular Information Sheet: Iraq dated October 2005.
20. United States Department of State Travel Warning: Iraq, dated June 28, 2005.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. GE 6: U.S. Department of State Background Note: Syria dated October 2005 at 8.

27. *Id.*
28. *Id.* at 11.
29. *Id.*
30. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
31. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
32. DoD 5200.2-R, ¶ C6.1.1.1.
33. *Id.* at Appendix 8.
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.* at ¶ C8.2.1.
38. Directive , ¶ E3.1.14.
39. *Id.* at ¶ E3.1.15.
40. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
41. Directive, ¶ E2.2.2.
42. Exec. Or. 10865 § 7.
43. ISCR Case No. 01-02452 (App. Bd. Nov. 21, 2002).