



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
----- ) ISCR Case No. 07-07873  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 29, 2008

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted a Security Clearance Application (SF 86) on May 25, 2005. On April 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Guideline E, and Guideline F that provided the basis for its action to deny him a security clearance and to refer the matter to an administrative judge. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant answered the SOR on April 14, 2008, and requested a hearing before an administrative judge. The case was assigned to me on June 18, 2008, and on June 23, 2008, I scheduled a hearing for July 25, 2008.

The parties appeared as scheduled. Fifteen government exhibits (Ex. 1-15) were admitted. Applicant and three witnesses (his spouse, a family friend, and a coworker) testified on his behalf, as reflected in a transcript (Tr.) received on August 5, 2008. At Applicant's request, the record was held open for one week to allow him to submit documentation. On July 28, 2008, Applicant submitted his marriage certificate and a settlement offer for the debt in SOR ¶ 3.h. Department Counsel did not object to their admission and the documents were entered as Exhibits A and B, respectively.

### **Procedural and Evidentiary Rulings**

#### **Motion to Amend SOR**

On May 23, 2008, the government moved to amend the SOR to add under Guideline E that Applicant deliberately falsified his May 25, 2005, SF 86 by not disclosing his former military service for Albania (SOR ¶¶ 2.c, 2.d, and 2.e) or his delinquent debts (SOR ¶¶ 2.f and 2.g). In his response of June 7, 2008, Applicant admitted the allegations but explained that he thought he only had to go back ten years, and with respect to the debts, that his wallet was stolen and he had not received any bills. On June 25, 2008, I granted the motion to amend, but informed the parties that the burden of proving intentional falsification was on the government in light of Applicant's explanations.

#### **Request for Administrative Notice**

On May 23, 2008, Department Counsel requested administrative notice be taken of certain facts relating to Albania and its foreign relations, including to the U.S. The request was based on publications from the U.S. State Department and the U.S. Embassy in Tirana, Albania. The government's formal request and the attached documents were not admitted into evidence but were included in the record.

On June 25, 2008, I notified the parties of my intention to take administrative notice of specific facts, subject to revision based on the evidence admitted at the hearing and any valid objections. Neither party filed any objections by the July 11, 2008, due date. Before the introduction of any evidence at the July 25, 2008, hearing, I confirmed there were no objections, but the government requested that notice also be taken of two additional facts concerning travel to Albania. I agreed to take administrative notice of those two facts as well as of pertinent facts concerning Albania, as set forth in the June 25, 2008, Order. The facts administratively noticed are set forth below in the Findings of Fact.

### **Findings of Fact**

In the SOR as amended, DOHA alleged under Guideline B, foreign influence, that Applicant's mother (SOR ¶ 1.a), siblings (SOR ¶ 1.b), and parents-in-law (SOR ¶ 1.b) are resident citizens of Albania; that Applicant owns "hundreds of acres" of land in Albania that he once valued at up to \$1 million USD (SOR ¶ 1.d); that in 1999, 2000,

2001, 2002, and 2005 he traveled to Albania (SOR ¶ 1.e) and to Yugoslavia, Germany, Italy, Switzerland, Greece, and France (SOR ¶ 1.f); that he had changed his name and asked his spouse to change her name because he did not want them to be identified as natives of Albania when in Albania (SOR ¶ 1.g), and that he possesses a record from Albania's defense ministry documenting his military training (SOR ¶ 1.h). Under Guideline E, Applicant was alleged to have indicated in an affidavit presented to a government investigator in January 2008 that he used U.S. travel documents for his travel abroad when his U.S. passport does not include entry stamps for all the trips (SOR ¶ 2.a); that in a January 2008 affidavit he had denied using his birth name since his U.S. naturalization (SOR ¶ 2.b); and that as noted above, he had not disclosed his past foreign military service on his SF 86 (SOR ¶¶ 2.c, 2.d, and 2.e) or his delinquent debts (SOR ¶¶ 2.f and 2.g). Under Guideline F, Applicant was alleged to owe eight delinquent debts totaling \$7,112 (SOR ¶¶ 3.a-3.h). Applicant admitted the allegations with the exception of SOR ¶¶ 3.c and 3.d, but offered explanations for his failure to list his military service and indebtedness on his SF 86 that, if proven, would indicate he did not intend to conceal or deceive. His admissions are accepted as findings of fact. After considering the evidence of record, I make the following additional findings of fact.

Applicant is a 41-year-old mechanic (technical installation) who has been employed by a defense contractor since late March 2004 (Ex. 1, Tr. 66). He seeks his first security clearance.

Applicant was born in Albania in April 1967. The youngest of six children born to native Albanian citizens, he attended an agricultural college in Albania from September 1980 to June 1984 (Ex. 1, Tr. 64). He received training in a military college from January 1987 to December 1988, and was awarded a degree/certificate (Ex. 1, Tr. 146). He then served in an artillery division of the Albanian army, and spent about six months as an artillery instructor, until May/June 1990. On finishing his military obligation, he fled to Yugoslavia under cover of night. He was opposed to communism, and sought permission from the U.S. Embassy in Yugoslavia (now Serbia) to immigrate to the U.S. (Ex. 4, Tr. 66-68).

In late January 1991, he was issued a provisional travel certificate by the United Nations High Commissioner for Refugees that was valid for travel to the U.S. Applicant was granted permission to immigrate to the U.S. in March 1991, and he came to the U.S. under the sponsorship of a private foundation (Ex. 9, Tr. 68-70). Applicant knew no English, and he socialized with another Albanian who had emigrated under the sponsorship of the same foundation (Tr. 159, 163).

In March 1992, he began working as a driver for a sweeping company. He worked in excess of 12 hours per day (Tr. 162). From 1994 to 2005, he traveled to Albania to visit his family members (Tr. 152), passing through various European

countries en route.<sup>1</sup> He had left his Albanian passport behind in Yugoslavia and presented documents issued by the U.S. to reenter the U.S. On a trip in August 1998, he used a reentry permit issued to him by the U.S. Immigration and Naturalization Service in April 1998 (Ex. 6, Ex. 8).

In February 1999, Applicant became a naturalized U.S. citizen. Presented with the opportunity to take a new name, he changed his name from his birth name to his present name so that he would not be recognized as Albanian on future visits to his parents. Given the problems in Albania at the time, he feared the country would again come under communist rule (Tr. 134-35).<sup>2</sup> Applicant did not renounce his Albanian citizenship out of respect for his family still residing there (Ex. 3). In March 1999, Applicant obtained his U.S. passport under his newly acquired name. The passport is valid to March 2009 (Ex. 7). Applicant did not change his state motor vehicle operator's license to reflect his new name (Ex. 11).

Applicant traveled to Albania on his U.S. passport to visit his family members in September 1999. His brothers had arranged for him to marry a native Albanian, and Applicant met his spouse for the first time during his three-week trip to Albania (Ex. 3, Tr. 33). She is from the same northern district in Albania where Applicant is from and where his family still resides. Applicant returned to Albania for a couple of weeks in July 2000 to see his parents, siblings, and fiancée (Ex. 1, Ex. 3).

In October 2000, Applicant went to Albania for his marriage. His spouse took his new last name even though Applicant wanted her to take his family name. They were told they had no option ("I wanted to put it [his birth surname] at that time I got married but they won't let you, you know, you just have to go the last name of your husband, and I put it, okay, I said no problem." ) (Tr. 30, 87). He sponsored her immigration and she eventually joined him in the U.S. in 2002 (Tr. 39, 74). She was only 22 at the time and had not worked in Albania (Tr. 39). They have two sons who were born in the U.S. in 2005 and 2006 (Ex. 1, Tr. 22, 65-66).

In early September 2001, Applicant began working as a driver/casket painter for a casket company (Ex. 1). About a week later, his eldest brother, a veterinarian for the Albanian government, was paralyzed in an accident involving a horse (Tr. 77-78, 82). Applicant traveled to Albania the following day and stayed a week (Ex. 2, Tr. ). In June 2002, Applicant went back to Albania for about three weeks (Ex. 1, Ex. 2).

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<sup>1</sup>Applicant testified he traveled to Albania maybe more than 20 times since 1994 (Tr. 152). On his SF 86 (Ex. 1), he listed six separate trips between August 1998 and June 2002, although his U.S. passport (Ex. 2) does not include stamps for all the trips.

<sup>2</sup>The U.S. State Department's *Background Note: Albania*, dated January 2008, indicates that communism fell in Albania in 1991, but much of the decade was marked by internal political deadlock. In early 1997 anarchy broke out following the collapse of several pyramid schemes that left thousands bankrupt, disillusioned and angry. After a UN Multinational Protection Force restored order, Albania was led by a series of short-lived socialist governments until July 2002.

In March 2004, Applicant started his employment with the defense contractor learning to be a fabrication technician (Ex. 1). A year later, he applied for a security clearance for his duties. On his SF 86 executed on May 25, 2005, Applicant listed his dual citizenship with Albania and the U.S. since his naturalization in 1999. He disclosed his birth name used until February 1999, his marriage in Albania in November 2004 [sic] to an Albanian native, and the Albanian citizenship and residency of his parents, his three brothers, and one of his two sisters.<sup>3</sup> Applicant listed six foreign trips to Albania since August 1998, and listed all the European countries that he had passed through en route to and from Albania in the past seven years. He did not disclose his prior military service for Albania in response to question 11, "Have you ever served in the military? (If yes, provide in chronological order your military history, begin with the most recent period and include Reserves, National Guard, Merchant Marines, and Foreign Military service.)." Nor did he indicate any foreign employment in response to question 33 or any contact with a foreign government in response to question 34, although he listed his military schooling in response to the education inquiry (question 5). Applicant also responded "No" to question 38 inquiring into any financial delinquencies over 180 days in the past seven years, and to question 39 asking about any debts currently over 90 days delinquent (SF 86). A check of Applicant's credit in August 2005 revealed past due balances of \$1,874 (SOR ¶ 3.a) and \$1,772 (SOR ¶ 3.b) on two credit card accounts charged off and/or placed for collection, a \$335 debt in collection since February 2003 (SOR ¶ 3.c), and a \$39 debt in collection since November 2002 (SOR ¶ 3.d) (Ex. 15).

During summer 2005, Applicant spent two weeks in Albania visiting his father, who was very ill (Ex. 1, Ex. 2).<sup>4</sup> Applicant returned to Albania for his funeral in October 2005 (Ex. 2, Tr. 76). Applicant and his three brothers inherited hundreds of acres of land in Albania that they split up in equal shares. Applicant estimates the value of his land is more than \$1 million USD. His mother takes care of his land for him (Ex. 2, Ex. 5, Tr. 34-36, 80-81).

On November 4, 2005, Applicant was interviewed by a government investigator about his dual citizenship and foreign ties to Albania. Applicant explained he kept his Albanian citizenship to maintain his family heritage, and because most of his family is there and he owns land there. Applicant denied any other financial interests in Albania. Applicant discussed his service in the Albanian military from 1987 to 1989, and added that he had later worked for the Albanian government for one month as an artillery instructor. Applicant expressed a willingness to renounce his Albanian citizenship as a condition of access because of the greater opportunities presented to him in the U.S. Applicant indicated he had close relationships with his mother, three brothers, a sister,

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<sup>3</sup>Applicant's SF 86 contains an obvious error about a family relationship as his first son is listed as a stepmother.

<sup>4</sup>His U.S. passport (Ex. 2) bears stamps showing entry into Albania on "03 LUG 2005" and departing "16 LUG 2005." On January 28, 2008, he signed an affidavit in which he indicated he went to Albania from 3 July 05 to 16 July 05 (Ex. 5). Yet, in April 2007, he told the investigator that the trip was in June 2005 (Ex. 3), and at his hearing, he testified that "LUG" was "month six." (Tr. 141). The discrepancy is relevant to the extent it shows another inaccuracy about which the government expressed concern.

and his parents-in-law, all Albanian resident citizens. He was in telephone contact with his mother daily, with his siblings monthly, and with his in-laws weekly. Applicant denied any of his relatives were vulnerable to duress or were hostile. He added that he maintained a friendship with a police officer in Albania, whom he contacted once every two weeks (Ex. 4).

Applicant was re-interviewed by a government investigator on April 6, 2007, concerning his foreign travel to Albania. He indicated he went to Albania in June 2005 when his father was sick and then returned in August 2005 [sic] for his father's funeral. When asked about his earlier travel, Applicant reported spending up to a week in Italy in conjunction with his trip to Albania in October 2001 [sic], two weeks in Yugoslavia in July 2000 en route to/from Albania, and one week in Switzerland and France in September 1999, again in conjunction with a visit to his family in Albania. When asked about his name change, Applicant indicated that he wanted a new start when he came to the U.S. and he feared the U.S. would look down on him for his last name. Applicant added that his spouse used his birth surname and that she would officially become a U.S. citizen in September 2007. Applicant reportedly told the investigator that he had daily contact with his mother but that he had no other contact with foreign nationals. He denied any close contact with his siblings over the past few years (Ex. 3).

Applicant's spouse and their two sons spent the summer of 2007 in Albania. They stayed one month with Applicant's mother and the other two months with her parents (Tr. 98). Applicant has not been to Albania since his father's funeral in October 2005 because of the expense. He is the sole provider for his family (Tr. 77).

Applicant's spouse became a U.S. citizen in about September 2007. At Applicant's request, she changed her last name to the family surname that he was given at birth. He no longer had the same concerns if they should travel to Albania under that name and he wanted to ensure that his siblings' offspring would recognize the family relationship (Tr. 30, 84-85). They had already changed their sons' surnames to his family name (Tr. 30).

In August 2007, DOHA asked Applicant to clarify his allegiance to the U.S. given his dual citizenship status, and his ownership of property in Albania. In his response of August 20, 2007, Applicant averred his allegiance was with the U.S. where his children are citizens and he would base his decisions on them. Concerning future plans for his property in Albania, Applicant indicated that he owned several acres of open space "with future use for hotels or resorts for people through the world, also camping for holistice [sic] use, possible value \$1 million." Applicant provided a copy of his current U.S. passport (Ex. 2).

On January 28, 2008, Applicant provided an affidavit to a government investigator in which he discussed his immigration to the U.S. as a refugee, and his service in the Albanian military as a commander with last duty from January 1989 to May 1990. He explained he was still a dual citizen of Albania and the U.S., but that he was loyal to the U.S. and would not bear arms against the U.S. As for his property

ownership, Applicant related he had inherited hundreds of acres of land in Albania on which stands a vacant house. He denied any obligations associated with his ownership of that foreign property, including any requirement to pay taxes. He expressed his intent to bequeath the property to his children on his death. Applicant denied he had used his birth surname on any official documentation after he became a U.S. citizen. He explained he had changed his name because he did not want to be identified when he returned to Albania. Applicant denied traveling to Albania other than on U.S. documents and indicated that U.S. border officials had not always stamped his passport. Applicant averred he had traveled to Albania in July and October 2005 after he had submitted his SF 86. He indicated he had made some mistakes as to the dates of his foreign travel when he completed his SF 86, and he had inadvertently omitted a May 2001 trip to Albania. Applicant related he continued to contact his mother daily, and that he had once weekly to twice monthly contact with his siblings, and he last saw them in October 2005 (Ex. 5).

During the course of Applicant's background investigation, the government learned that Applicant had been pulled over for speeding in May 2001 and that he presented at that time an operator's license under his birth name (Ex. 11). On January 30, 2008, Applicant was re-interviewed by the investigator about his foreign travel and use of his birth name after he had changed his name. He maintained in an affidavit that before 1999, he used his U.S. permanent residency card and a permit to reenter the U.S. Applicant denied any intent to conceal information. Concerning his use of his birth name after he had changed his name in 1999, Applicant indicated that when he was cited for speeding in May 2001, he may have been using a driver's license under his birth name and that could not recall when he changed it. Applicant denied he had opened any credit accounts using his birth name since 1999 or that he had applied for any credit under the name he acquired in 1999 (Ex. 6).

A check of Applicant's credit on December 5, 2007, revealed Applicant had made no progress toward resolving the debts in SOR ¶ 3.a (\$2,449 balance), ¶ 3.b (\$2,650 balance), ¶ 3.c (\$335 medical debt), or ¶ 3.d (\$39 telephone debt), and that he owed on other delinquent accounts: \$905 for phone services placed for collection in August 2005 (SOR ¶ 3.f), \$196 owed a satellite television provider since November 2005 (SOR ¶ 3.g), and \$311 on a retail charge card closed in October 2006 (SOR ¶ 3.h) (Ex. 13). A more recent check of Applicant's credit on February 14, 2008 (Ex. 12) showed the debts were still outstanding with the balance of SOR ¶ 3.a increasing to \$2,482. Also a telephone services provider had placed a \$193 debt balance for collection in March 2004 (SOR ¶ 3.e).

Applicant indicates the debts in SOR ¶ 3.e. and ¶ 3.f were for a telephone and/or services he thought were free, and that he was unable to straighten it out with the service provider due to his limited English (Tr. 108-10). He claims he incurred only about \$200 in consumer credit charges on SOR ¶ 3.a before he lost the card (Tr. 112). Applicant made only one payment on the debt thereafter (Tr. 113). He does not recognize the debt in SOR ¶ 3.b or the medical debt in SOR ¶ 3.c (Tr. 114). As for the satellite television debt, Applicant bought a satellite dish at a local retail outlet. When he

called the provider to initiate service, he was told that he would be sent a new receiver. He refused to pay for one because he did not need it, and when the creditor would not listen to him, he did not pay for his second month of service that he received at his residence (Tr. 116-17). Applicant maintains he incurred only about \$125 of the charges on the department store credit card account in SOR ¶ 3.h and that he received no statement of his account until his spouse called the creditor (Tr. 117-18). He had changed addresses ("I lost the address and I didn't know where I could pay it, and I—And at that time, we were moving from the other house to our house." Tr. 129). In early July 2008, an assignee collecting the debt offered to settle the \$311.42 debt on receipt of \$124.57 (Ex. B). As of mid-July 2008, there is no proof that he paid on any of the delinquent debts listed on his recent credit report. He does not intend to pay the telephone debt of \$905 even though he made the calls ("Because it looks to me not right, you know, and I said I'm not going to try to pay nothing." Tr. 131).

As of mid-July 2008, Applicant had not renounced his Albanian citizenship, although he does not possess any document that currently identifies him as an Albanian citizen (Tr. 88). He is not required to maintain his citizenship to keep his land in Albania. Applicant is considering building a small hotel someday on that land as a legacy for his children (Tr. 95). He continued to telephone his mother in Albania, usually every weekend. Applicant calls his brothers more often than once monthly. He speaks to his sisters about once a month. His eldest brother still works as a veterinarian for the Albanian government although since his accident Applicant is not certain of his brother's job duties. His other brothers work in the dairy field (makes milk and cheese) and as a carpenter. His two sisters do not work outside of the home. One takes care of her husband who is paralyzed on one side and the other's husband guards restaurant premises at night to prevent break-ins (Tr. 77-80). Applicant has not spoken with his friend the policeman in Albania for about two years (Tr. 83).

Applicant's spouse visits her parents about once a year in Albania when she can afford to do so. She contacts her parents once weekly when she is able to reach them. She speaks with her siblings in Albania about once a month. Her relatives in Albania have cell phones (Tr. 36-38). Her father had been a truck driver in Albania until illness left him unable to work. Her mother was employed on a farm. Her siblings support themselves by working the land and their animals (Tr. 38-39). They have never worked for the Albanian government (Tr. 39).

Applicant and his spouse rent an apartment in the U.S. She does not drive. Applicant and his spouse have a good friend in the U.S. who has helped them deal with creditors and helped them understand documents confusing to them as non-native English speakers. She drives Applicant's spouse when needed because Applicant's spouse does not drive and she reviewed all the paperwork from DOHA about Applicant's clearance with him (Tr. 157). She believes Applicant and his spouse are good people who don't quite understand at times (Tr. 22-25).

A forklift operator with 33 years of experience at the company developed a close working relationship with Applicant over the past five years. He considers Applicant to



be a very professional and diligent installation mechanic. This coworker does not require a clearance for his work but understands Applicant needs a clearance to perform some special hull treatment (Tr. 42-44).

Following review of official publications of the U.S. government that address the history, economic and political activities in Albania and its relationship to the U.S., I take administrative notice of the following facts:

Albania is a parliamentary democracy that was controlled nearly continuously by a succession of foreign powers until the mid-20th century, with only brief periods of self-rule. After World War II until the fall of communism in 1991, Albania adhered to a strict Stalinist philosophy that led to isolation and underdevelopment. With the election of the first democratically elected president in 1992, Albania began a deliberate program of economic and democratic reform, but unscrupulous investment and the collapse of pyramid schemes led to armed revolt in 1997. Order was restored through international intervention, and in 1998 Albania ratified a new constitution guaranteeing the rule of law and protection of fundamental human rights. Since 2002, Albania has made significant progress in transforming its economy into a market-oriented system, in instituting democratic reforms and rule of law initiatives, and in developing relations with its neighbors and the United States. Its primary long-term goals are to gain NATO and European Union membership and to promote closer bilateral ties with its neighbors and the U.S. Albania and the U.S. enjoy friendly and cooperate relations. Pro-U.S. sentiment is widespread among the Albanian population. Since fiscal year 1991, the U.S. has provided Albania with more than \$616 million in assistance not counting food aid. Albania has aggressively worked with the U.S. and other countries to combat terrorism, but the government and police forces face substantial challenges in fully enforcing border security and in combating organized crime and corruption.

Albania generally respects the human rights of its citizens, although the country continues to experience problems in some areas, including societal "blood feud" killings, security force abuse of prisoners and detainees, poor prison and pretrial detention conditions, police corruption, discrimination against women, children and minorities, and human trafficking. In 2007, domestic and international rights groups were allowed to operate in Albania without government restriction and government officials were cooperative and responsive to their findings. The government also respected legal prohibitions against arbitrary interference with personal privacy.

The Albanian government considers any person in Albania of Albanian parents to be an Albanian citizen. Dual nationals may be subject to Albanian laws that impose special obligations. Male Albanian citizens are subject to compulsory service obligations and those guilty of draft evasion are subject to prosecution in Albania. The overall security situation in Albania has improved in recent years although the crime rate continues to be high. A passport is required to enter Albania. A visa is not required to enter but an entry stamp is issued at the point of entry that is valid for a stay of up to 90 days. Foreign visitors are rarely targeted, but travel by U.S. government employees in the northern administrative districts had been restricted to secure vehicles with escort

due to possible threats by criminal elements against the physical safety of American citizens in the area. As of September 2007, travel restrictions had been lifted for overnight stays in the area where Applicant's family lives.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Foreign Influence**

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant’s mother, siblings, and parents-in-law are resident citizens of Albania (SOR ¶¶ 1.a, 1.b, 1.c). He has bonds of affection and/or obligation with his family members, which raise security concerns under AG ¶ 7(a) (“contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion”). Applicant calls his mother every weekend, his brothers monthly, and his sisters every other month. He has returned to Albania to visit them an estimated 20 times since immigrating to the U.S. in March 1991.

Applicant’s ties to Albania through his spouse also heighten the risk of undue foreign influence. Although his spouse became a U.S. naturalized citizen in 2007, she has close bonds of affection and/or obligation with her parents and siblings in Albania. She speaks with her parents by telephone about once weekly depending on whether she is successful in making contact, and with her siblings about once a month. AG ¶ 7(d) (“sharing living quarters with a person or persons, regardless of citizenship status, if the relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion”) applies.

On his father’s death in 2005, Applicant inherited with his brothers hundreds of acres of land in Albania (SOR ¶ 1.d). When asked to estimate the value of that foreign property asset, Applicant indicated it was worth in excess of \$1 million USD. He testified at his hearing that he and his brothers have divided the property. It is not clear whether the \$1 million figure represents his share or the entire asset held with his brothers. Even so, it is a substantial foreign property interest that Applicant intends to retain and

then bequeath on his death to his children. Applicant and his spouse testified to potentially building a hotel on his land to enhance the legacy for their children. AG ¶ 7(e) (“a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation”) applies.

Applicant’s travels to Albania (SOR ¶ 1.e) primarily implicate AG ¶ 7(a) in that they reflect the strength of his foreign family ties. There is no indication that Applicant has engaged in conduct while in Albania that would fall within AG ¶ 7(f) (“conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country”) except perhaps maintaining his Albanian citizenship. According to the U.S. State Department, dual nationals may be subject to Albanian laws that impose special obligations. As for Applicant’s travels to various European countries (SOR ¶ 1.f), he credibly explained that on each trip to Albania, he had a flight layover in a European country. He did not travel to all of the six countries listed (Yugoslavia, Italy, Germany, Switzerland, Greece, and France) on each trip. Notwithstanding the discrepant information about the length of his layovers,<sup>5</sup> it is still difficult to see how a brief visit to a European country heightens his risk of foreign influence.

The government also alleges that an unacceptable risk of undue foreign influence exists because Applicant changed his name, and had his spouse change hers as well, because he did not want them to be identified as Albanians when they returned to Albania (SOR ¶ 1.g). The evidence shows that Applicant took on a new name when he became a naturalized U.S. citizen in February 1999. Applicant and his spouse both testified that he changed his name because he feared recognition by Albanian authorities when in Albania.<sup>6</sup> This shows real concern on Applicant’s part that pressure, coercion, or influence could be placed on him and/or his family members in Albania, perhaps because of what he had witnessed during Albania’s communist past and the circumstances under which he left Albania. Given Applicant traveled to Albania before

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<sup>5</sup>Applicant told a government investigator in April 2007 (Ex. 3) that in conjunction with his trips to Albania to see his family, he spent a week in Switzerland and France in September 1999, two weeks in Yugoslavia in July 2000, a few days in Germany in October 2000, and one week in Italy in October 2001 [sic]. However, he now claims he stopped only one night in each country, but also that he stayed in Italy three or four nights (Tr, 155). When asked about his prior admissions to having stayed as long as a week or two in these other countries before proceeding to or from Albania, Applicant responded that he might not have understood the question posed to him by the investigator in April 2007, that “Maybe I said one week or two weeks that I stayed in my country.” (Tr. 156).

<sup>6</sup>Applicant initially indicated during his interview of April 2007 that he changed his name when he came to the U.S. because he wanted a new start and feared that the U.S. would look down on him for his last name. This does not make sense given he changed his name some eight years after he came to the U.S. Whether out of fear because he was being reinterviewed, a failure to fully understand what was being asked due to language issues, or some other reason, Applicant made other statements during that interview, including that he has not had close contact with his siblings over the past few years, that contradict his admissions in November 2005 and his hearing testimony. Applicant had not seen his siblings in person since his father’s funeral in 2005, but he had telephone contact with them.

1999 using a U.S. issued entry permit issued under his birth name (see Ex. 8), one could reasonably question his motivation for changing his name in 1999, but the U.S. State Department confirms that Albania was ruled by a series of short-lived socialist-led governments after the anarchy of 1997 until July 2002. Applicant credibly explained that he still feared Albania could revert to its communist past during that period. As for his spouse taking on his new surname on their marriage in 2000, she had no choice but to take his last name. At his urging, she changed her last name to his family name when she became a U.S. citizen in 2007 as the strengthening of democracy in Albania had sufficiently alleviated his fears. At present, his name change is not seen as raising actionable foreign influence concerns.

Similarly, his possession of a record showing his military training in Albania (SOR ¶ 1.h) in and of itself does not generate Guideline B concerns. Applicant explained that he asked his brother to obtain the document for him as he wanted a record of his training/education (Tr. 98-100). None of the disqualifying conditions under AG ¶ 7 are pertinent to his mere possession of a document confirming past military service before he came to the U.S.

Applicant and his spouse have strong family ties to Albania that are being reinforced through frequent telephone contact and annual visits to Albania when their budget permits. There is nothing untoward about their familial relationships. However, despite being disabled, Applicant's oldest brother still works for the Albanian government as a veterinarian (Tr. 78). It is unclear to what extent he is able to fulfill veterinary duties since he became disabled. As a dairy farmer and a carpenter respectively, Applicant's other brothers do not hold positions that enhance the risk of Applicant being placed in the untenable position of having to choose between them and the U.S. His sisters, with whom he has less frequent contact, do not work outside the home. His mother is elderly and retired, his father-in-law had been a trucker before his illness, and his mother-in-law works on the farm as do his spouse's siblings. Nothing about their duties has military, intelligence, or security implications. Yet, I am unable to fully apply AG ¶ 8(a) ("the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S."). Little is known about his relatives' associations and activities in Albania, so the risk of undue foreign influence cannot be completely ruled out. It is also noted that while Albania and the U.S. enjoy good relations, it was not too long ago that Albania was ruled by socialist-led governments.

Moreover, Applicant remains tied to Albania through his ownership of hundreds of acres of land in Albania. The foreign influence risk presented by his significant foreign asset cannot be fully assessed without regard to concern for his heritage and perhaps even for his family members in Albania. Applicant testified that he and his brothers split up their inheritance, but he presented no evidence to show a legal division of the property. When asked whether they own property in Albania, Applicant's spouse responded, "Well, actually, my husband and his brothers, they do." (Tr. 34). She testified further that the family home is located on Applicant's land ("they have a house,

an old house which his grandfather made it, his dad made it, with his mom, and they raised seven children there.”), and that it is the family’s current residence (Tr. 35). Even if Applicant owns only a share, and the house is vacant as claimed by him in January 2008 (Ex. 5), he intends to keep the property interest as a legacy for his children, and even to possibly enhance its value through developing it for tourism purposes. AG ¶ 8(f) (“the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual”) does not apply.

Despite the considerable risks Applicant took to flee Albania and immigrate to the U.S. when he had no family here and knew no English, he retains considerable ties to Albania through his family and his property interest. He went back to Albania to get married in a relationship arranged between his brothers and his father-in-law. Applicant does not own any property in the U.S. of comparable value to his Albanian property. He and his spouse rent their apartment in the U.S. While his voluntary acquisition of U.S. citizenship weighs in his favor, I am unable to conclude on the record presented that his ties to the U.S. are so deep and longstanding to overcome his loyalties and obligations to his family members in Albania. AG ¶ 8(b) (“there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest”) does not apply.

## **Personal Conduct**

The security concern related to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

When Applicant applied for his security clearance in May 2005, he did not disclose his previous service in the Albanian military from January 1987 to about May 1990, or that he had worked as an artillery instructor for the Albanian government for about six months. The government contends that Applicant deliberately did not list his foreign military service either in response to question 11, “Have you ever served in the military (“If yes, provide in chronological order your military history: begin with the most recent period and include Reserves, National Guard, Merchant Marines, and Foreign Military Service.”) (SOR ¶ 2.c), to question 13, “Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?” (SOR ¶ 2.d), or question 14, “Have you ever had any contact with a foreign government, its establishments (embassies or consulates), or its representatives, whether inside of outside the U.S., other than on official U.S. Government business?” Applicant had an

obligation to list his foreign military service in response to question 11. The question unambiguously requires the reporting of any foreign military service. The evidence does not establish that Applicant was required to report his military service in response to questions 13 or 14. Civilian employment as an artillery instructor for the military would fall within the scope of question 13, but it is unclear whether he held the position in a civilian capacity. As for question 14, it was not sufficiently shown that Applicant had any contact with a foreign government outside of his military service, which is already covered under question 11.

Additionally, Applicant did not disclose on his SF 86 any financial delinquencies in response to question 38 concerning any debts over 180 days delinquent in the last seven years (SOR ¶ 2.f), or question 39, any debts currently over 90 days delinquent (SOR ¶ 2.g). Checks of Applicant's credit revealed a \$1,874 past due credit card balance (SOR ¶ 3.a) on an account charged off in about September 2001, a \$1,772 past due balance on a credit card account in collection since about December 2002 (SOR ¶ 3.b), a \$39 telephone debt in collection (SOR ¶ 3.d) since June 2003, a \$335 medical debt in collection since February 2003 (SOR ¶ 3.c), and a telephone services debt of \$193 placed for collection in March 2004 (SOR ¶ 3.e).

The knowing and willful omission/concealment of information required to be reported on an SF 86 falls within AG ¶ 16(a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities"). While Applicant has admitted that information was not disclosed, he denies the omissions were deliberate. Concerning his failure to report his foreign military service, Applicant expressed his belief that the SF 86 had a ten-year scope ("When I filled out application, it said I only had to go back last ten years." Answer, Tr. 122). There is nothing in the record that corroborates Applicant's claim that he was told to go back only ten years, although it also appears that he was focused on events since he immigrated to the U.S. as a refugee in 1991. His subsequent disclosure of his military service when he was interviewed in November 2005 shows he lacked the intent to conceal his foreign military record.

As for his failure to list the debts in SOR ¶¶ 3.a, 3.b, 3.c, and 3.d, Applicant indicated that his wallet had been stolen and that he had not received any bills (Answer). When asked about the debts at his hearing, Applicant indicated he had not heard from the creditors until about two weeks ago, when he received a letter from the creditor in SOR ¶ 3.h (Tr. 127-28). When asked about his telephone debt in SOR ¶ 3.e, which was referred for collection in March 2004, Applicant admits he made the telephone calls, but he claims he did not understand the terms of the service and was unable to communicate with the creditors due to limited English. He admits he opened the credit card account in SOR ¶ 3.a and incurred about \$300 in charges (Tr. 111). While he averred that the credit card was in his wallet that he had lost ("I think I made one payment after that, after I told them, they sent it on paper and I wrote something down on that paper and I sent the paper to pay, and I sent that to them, and then after that I didn't make any more payments. And I tried to call them to say to stop, and I said I

lost it or something. I don't remember, I'm not sure because it's a long time, and I didn't try to put it in writing to them, to get all the story." Tr. 113), it is not clear that he knew in May 2005 that he had an obligation to pay these debts. This bears negative implications for his handling of his financial matters (see Guideline F, *infra*) but it falls short of establishing knowing and willful concealment.

Nor has DOHA proven that Applicant deliberately falsified a written affidavit in January 2008 when he claimed that he had utilized travel documents provided by the U.S. for travel (SOR ¶ 2.a). While the passport in evidence does not include entry stamps for all of Applicant's listed travel to Albania, and the State Department reports that an entry stamp will be issued at the point of entry (see *Albania, Country Specific Information*, dated September 20, 2007), it is indeed possible that Applicant's U.S. passport was scanned but not stamped at the border. Applicant's U.S. passport bears stamps showing travel to Albania in 1999, 2000, 2001, and 2005, and he furnished a re-entry permit issued by the U.S. in April 1998. The government presented no evidence that he traveled on any foreign document, such as an Albanian passport, after he acquired his U.S. citizenship (see AG ¶ 17(f) ("the information was unsubstantiated")).

The government established that Applicant falsified his January 28, 2008, affidavit when he denied that he had used his birth name on any official documents after February 1999 (SOR ¶ 2.b). The state police checked his traffic record on January 30, 2008, and discovered that Applicant held a state driver's license under his birth name and that he had been cited for speeding in May 2001 (Ex. 11). Current information on record with the state as of January 30, 2008, failed to confirm that Applicant had ever changed his name on his driver's license. Applicant can be expected to know what name was on his driver's license. When he was confronted about the discrepancy on January 30, 2008, Applicant indicated that as of May 2001, he "may have still been using" a state driver's license issued in his former name, and that he could not recall when he changed it (Ex. 6). While there is a relevant distinction to be made between knowingly acquiring a driver's license under a former name and keeping an old license under a former name until it was up for renewal, Applicant has not presented a credible explanation to overcome the inference of falsification warranted by the evidence in this case. In addition to the state's retrieval of the traffic record under Applicant's birth name in January 2008, Applicant made several inconsistent statements in April 2007 that undermine his overall credibility.<sup>7</sup> AG ¶ 16(b) ("deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority or other official government representative") applies. None of the mitigating conditions are pertinent.

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<sup>7</sup>As previously noted in discussing the Guideline B concerns, Applicant was previously interviewed by the investigator in April 2007, and he made several statements at that time that contradict not only his prior admissions of November 2005 but also his hearing testimony. The government did not move to amend the SOR to allege any falsification of his April 2007 interview, although they are appropriate for considering Applicant's suitability for access under the whole person concept.



## **Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Available credit reports show that as of February 2008, Applicant owed delinquent debt totaling about \$7,112. He admitted all but \$374 (SOR ¶¶ 3.c and 3.d) of the debt. While this is not an insurmountable financial burden, Applicant demonstrated disregard of his financial obligations which is incompatible with holding a security clearance. He stopped making payments on his credit card debt in SOR ¶ 3.a after he apparently lost the card. He acknowledges he incurred the telephone charges in SOR ¶¶ 3.e and 3.f, and while he now claims to have no knowledge of the debt in SOR ¶ 3.b, he failed to show that it was not his responsibility. AG ¶¶ 19(a) ("inability or unwillingness to satisfy debts") and 19(c) ("a history of not meeting financial obligations") are clearly implicated. His liability for the debt in SOR ¶ 3.c was not sufficiently established, however.

Assuming that Applicant was unaware of the debts in SOR ¶¶ 3.b and 3.c until they became an issue for his clearance, he had made no payments on any of his debts as of his hearing. Rather, he showed an unwillingness to resolve those debt balances that exceed the original charges. He does not intend to pay the telephone debt of \$905 even though he made the calls ("Because it looks to me not right, you know, and I said I'm not going to try to pay nothing." Tr. 131). Whatever difficulty Applicant had with dealing with the creditors because of his limited English skills, it cannot justify his inattention to the accounts, especially when Applicant could call on the assistance of a family friend who had dealt with at least one creditor on his spouse's behalf. After the hearing, he presented documentation showing the creditor in ¶ 3.h had offered to settle his debt on receipt of two payments of \$124.57 (Ex. B). The payment coupon was missing so presumably Applicant kept it to send in a payment. Mitigating condition AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") has limited applicability in this case. His recent efforts to resolve the debt in SOR ¶ 3.h warrant a favorable finding as to that debt, but it is not enough to ensure that Applicant can be counted on to deal responsibly with his creditors in the future.

## **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The salient issue in the security clearance determination is not in terms of loyalty, but rather what is clearly consistent with the national interest. See Executive Order 10865, Section 7. An applicant may have the best of intentions and yet be in an untenable position of potentially having to choose between a dear family member and the interests of the U.S. Applicant's ties to Albania are familial and financial, and not sufficiently mitigated by countervailing strong bonds in the U.S. He has his employment here but he retains his Albanian citizenship despite having fled Albania for refugee status in the West out of regard for his family. He and his spouse travel to Albania when their finances permit it. Applicant sent his spouse and children to Albania for three months last summer. In addition to the foreign influence concerns, doubts persist for his judgment and reliability because of his handling of his personal credit and his failure to provide consistent responses at times to U.S. government inquiries, including those concerning the date of his marriage, the duration of his stay in various foreign countries, the reasons for changing his name, the dates of his father's death, when he lost his wallet, just to name a few. Even if due to inadequate recall or to a failure to understand the importance of the clearance process, his inconsistencies cast doubt as to whether Applicant has the requisite good judgment and reliability that must be demanded of those granted access to classified information. Based on the record before me, I am unable to conclude at this time that it is clearly consistent with the national interest to grant him access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant
Subparagraph 3.f:	Against Applicant
Subparagraph 3.g:	Against Applicant
Subparagraph 3.h:	For Applicant

### **Conclusion**

In light of all of the circumstances presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ELIZABETH M. MATCHINSKI  
Administrative Judge