



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



In the matter of:)	
)	
)	ISCR Case No. 07-17616
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul Delaney, Esquire, Department Counsel
For Applicant: *Pro Se*

April 20, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the foreign influence concerns that arose from her ties to and contact with her husband, father and other family members who are citizens and residents of Bosnia and Herzegovina.

On July 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on September 22, 2008. Applicant admitted all SOR allegations, denied they created a security concern, and requested a hearing.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on January 6, 2009. A notice of hearing was issued on January 9, 2009, scheduling the hearing for February 13, 2009. The hearing was conducted as scheduled.

The government submitted 10 documentary exhibits that were marked as Government Exhibits (GE) 1-10. GE 1 and 2 were admitted into the record without objection. Administrative notice was taken of the contents of GE 3-10 without objection.² Department Counsel submitted a document containing written comments on the contents of GE 3-10 for my consideration which was marked as Appellate Exhibit (App. Ex.) I, and made part of the record without objection. Applicant testified, called her daughter as a witness to testify on her behalf, and submitted five documentary exhibits that were marked as Applicant Exhibits (AE) 1-5, and admitted into the record without objection. The transcript was received on February 20, 2009.

Findings of Fact

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

Applicant is a 53-year-old married woman who was employed as a linguist by a defense contractor from August 2006 until July 2008, when her employment was terminated pending resolution of her application for a security clearance. She has been a naturalized U. S. citizen since March 2004, and she has possessed a U.S. passport since April 2004.

Applicant was born and raised in what is now Bosnia and Herzegovina. She resided there with her husband and two children until 1992, when the civil war that raged through their country turned them into refugees literally overnight. At the time the civil war erupted, Applicant was working as the retail manager of a children's clothing store and her husband was employed as a truck driver and mechanic. Applicant and her husband lost their home and all their possessions as a result of the war, but were able to escape with their two children into Germany where Applicant's two brothers and one sister had immigrated years earlier. Applicant's mother-in-law and father-in-law were killed during the conflict.

Applicant, her husband and their two children resided in Germany on refugee visas from approximately October 1992 until they were granted refugee status into the United States in August 1998. Their entry into the U.S. was sponsored by a church-based organization that worked to assist persons in predicaments such as Applicant and her family found themselves. The organization continued to provide assistance to Applicant's family after their arrival in the U.S.

Applicant and her husband, who is now 63 years old, were married in June 1975. Shortly after immigrating to the United States, Applicant's husband decided he would be

² The notice taken of the contents of GE 7-10 was limited to factual matters described therein which would also be contained in public records. (Tr. p. 38)

unable to adjust to life in the U.S. His decision was based partially on language and cultural differences and partially on a lingering sense of guilt over the death of his parents and his hope that he would be able to identify their remains in the event they might be located in one of the mass graves that were being uncovered in Bosnia and Herzegovina. As a result, Applicant and her husband agreed to amicably separate with him returning to live by himself in Bosnia and Herzegovina, and Applicant continuing to reside in the U.S. with their children. He returned to Bosnia and Herzegovina in about late 1998.

Applicant sent her husband about \$1,000 annually for a number of years after they separated. She did not intend the money as support for her husband but rather as gifts from her and their children to recognize special days such as his birthday or father's day. Applicant disavows having any continuing love or affection for her husband and does not foresee them ever again living as husband and wife.

Applicant obtained an associate's degree in retail business management and liberal arts in May 2003, a bachelor's degree in social work in May 2005, and a master's degree in social work in December 2006. All her degrees were earned in the U.S. state where the family first immigrated. Her son and daughter also both earned bachelor's degrees while they resided with Applicant in that state.

Applicant worked as a health care aide in Germany from March 1993 until April 1997. She was unemployed from April 1997 until September 2000. In addition to her employment with a defense contractor from August 2006 to July 2008, Applicant has worked in the U.S. as a retail sales associate from September 2000 to October 2005; as an office assistant from September 2001 to April 2003; as an interpreter from September 2001 until at least August 2006, when she submitted her security clearance application; and again as an interpreter from November 2005 until at least August 2006. As indicated by the dates of employment listed in her security clearance application, Applicant frequently worked more than one job at a time. In addition to working, Applicant obtained student loans to help finance herself and her children while she attended college.

Applicant's daughter is now 33 years old, married, has one child who is two years old, and was pregnant with her second child at the time of the hearing of this case. After graduating from college, Applicant's daughter enlisted in the U. S. Air Force in May 2002. She was not a U. S. citizen at the time of her enlistment, and, therefore could not become a commissioned officer. She became a naturalized U.S. citizen in October 2003, and obtained a commission in the U.S. Army in 2006. She currently is a first lieutenant, possesses a security clearance, and is serving full-time with the Army National Guard.

Applicant's son is now 27 years old. He became a naturalized U. S. citizen in March 2004. He is single and lives in a different state in the U. S. than his mother and sister. He is working and pursuing an MBA degree.

Applicant's father is 82 years old. He is a citizen and resident of Bosnia and Herzegovina. Applicant's mother died when Applicant was an infant. Applicant's father worked as a carpenter until his retirement about 12 years ago. He supports himself through a generous pension and does not receive any support from Applicant. He served in the Yugoslavian military shortly after the end of World War II, but did not otherwise work for

any foreign government. Applicant speaks with her father by telephone about three times a year. She does not provide her father with any financial support.

Applicant has two older brothers and one older sister who are all citizens and residents of Germany. All of her siblings immigrated to Germany in the early 1970s. One of Applicant's brothers is employed as a plumber and the other is employed as a crane operator. Applicant's sister is employed as a home care aide. Applicant speaks by telephone with her brothers approximately once a year and with her sister about two or three times a year.

Applicant has a half-brother who is married and has two children. He works as a sales manager for a car dealer. Applicant's half-brother is a citizen of Bosnia and Herzegovina, but he has resided in Serbia since the late 1980s. Applicant has a half-sister who is married, has resided in Croatia since about 1991, and who works in a bakery. Applicant has another half-sister who is married, has resided in Germany for about the past five years, and is a homemaker. Lastly, she has a sister-in-law who is a widow with adult children, who resides in Bosnia and Herzegovina, and who operates a housekeeping service. Applicant's contacts and relationships with her half-siblings and sister-in-law are casual and minimal.

The record evidence is somewhat confusing concerning Applicant's travels to Bosnia and Herzegovina. However, it is clear she visited there from June-August 2002, July-August 2003, and June-August 2004. Some parts of the record would seem to indicate all her travels to Bosnia and Herzegovina were side trips taken while she was visiting with her daughter who was stationed in Italy with the Air Force. However, the clearest account of the visits is contained in the statement Applicant provided on June 14, 2007 (GE 2). According to that document, the sole purpose of these trips was to visit with her father and husband. She stayed with her father during each of the visits and, according to her testimony (Tr. p. 65), her contact with her husband consisted of meeting with him and other persons for dinner.

From June-August 2006, Applicant traveled to Croatia, Ukraine, Italy and Bosnia and Herzegovina. Her travel to the Ukraine was in the company of a friend who had immigrated from the Ukraine some years before. They stayed with his friends during their three-week visit to the Ukraine. Applicant thereafter spent one day in Croatia visiting with her half-sister and four days in Italy visiting with her daughter who was stationed there with the U. S. Air Force. The remainder of the trip was spent visiting and staying with her father in Bosnia and Herzegovina. She again met her husband for dinner.

Applicant's defense contractor employer assigned her to work with the U. S. Army in Kosovo from July 2007 to July 2008. She traveled from Kosovo to Italy to again visit with her daughter during this time period and stopped in Bosnia and Herzegovina for a few hours to visit with her father. Applicant notified her employer before she traveled to Italy and Bosnia and Herzegovina and received permission to engage in the travel. Applicant has neither plans nor the intention of visiting Bosnia and Herzegovina in the future.

Although Applicant did not possess a security clearance at the time, she was permitted occasional access to classified information while working with the Army in

Kosovo. There is no indication in the record that she ever mishandled or otherwise risked the compromise of any classified information.

The following information about Bosnia and Herzegovina is relevant to the decision in this case:

After the breakup of Communist Yugoslavia, Bosnia and Herzegovina was torn apart by a civil war between Bosniaks (Bosnian Muslims), Serbs, and Croats from 1992 to 1995. The war resulted in the deaths of many thousands of persons and the displacement and impoverishment of large parts of the population. A desperate Bosniak-dominated Bosnian government, facing an international arms embargo and outgunned by breakaway Bosnian Serbs, accepted the help of Iran, as well as several thousand Islamic radicals, mercenaries, and others. The 1995 Dayton Peace Accords, which ended the conflict, required all foreign forces to leave Bosnia.

Most did, but some Islamic radicals remained behind. . . .

* * *

Although the terrorist threat in Bosnia appears to have declined in recent years, some observers have asserted that Bosnia poses a more significant terrorist risk than often reported. . . . Although presenting the threat in less dire terms, U. S. officials acknowledge that the Balkans may serve as a transit point or recuperation area for terrorists.

* * *

However, it should also be noted that Bosnian opposition to terrorism has been broad, despite the still-deep ethnic divide in the country. The United States still enjoys a strong reservoir of support in Bosnia, especially among Bosniaks, for bringing peace to the country and providing post-war aid. . . .

* * *

U. S. officials have lauded Bosnia's efforts in the fight against terrorism. In his 2002 State of the Union Address, President Bush singled out Bosnia specifically for praise for its cooperation with the United States.³

Also:

Despite increased ethnic polarization and disputes among Bosnian political leaders that hindered the functioning of state government for most of the year, Bosnia and Herzegovina's law enforcement organizations cooperated with the United States on international counterterrorism issues. Bosnia remained a weak, decentralized state and ethnically based political confrontations continued to undermine national government. As a result of

³ *Islamic Terrorism and the Balkans*, CRS Report for Congress, July 26, 2005. (GE 6)

weak interagency communication, competing security structures, and political interference in law enforcement, Bosnia is vulnerable to exploitation as a potential staging ground for terrorist operations in Europe. The dysfunctional Bosnian state government and efforts by Republika Srpska officials to undermine state-level institutions contributed to a slowdown, and in some cases, setbacks in efforts to improve operational capabilities to combat terrorism and terrorism finance.

. . . Although Bosnian capabilities and potential for independent action were degraded over the year, Bosnian authorities were generally effective and responsive to U. S. counterterrorism cooperation requests.

* * *

Bosnia and Herzegovina continued its deployments in support of MNF-I. In September, the sixth rotation of the Armed Forces 36-member Explosive Ordnance Disposal Unit deployed to Iraq. The Armed Forces also undertook specialized training that would allow for further deployments to either Iraq or to support Operation Enduring Freedom.⁴

Finally, regarding Bosnia and Herzegovina:

The government's human rights record remained poor. Although there were improvements in some areas, serious problems remained. There were reports of increased deaths from landmines, police abuses, poor and overcrowded prison conditions, increased harassment and intimidation of journalists and members of civil society, discrimination and violence against women and ethnic and religious minorities, discrimination against persons with disabilities and sexual minorities, obstruction of refugee return, trafficking in persons, and limits on employment rights. . . .⁵

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this

⁴ *Country Reports on Terrorism, Chapter 2 -- Country Reports: Europe and Eurasia Overview*, U. S. Department of State, April 30, 2008. (GE 4)

⁵ *Bosnia and Herzegovina, Country Reports on Human Rights Practices - 2007*, U.S. Department of State. (GE 5)

policy guidance. Considering the evidence as a whole, Guideline B (foreign influence), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁶ The government has the burden of proving controverted facts.⁷ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁸ although the government is required to present substantial evidence to meet its burden of proof.⁹ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”¹⁰ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.¹¹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹²

No one has a right to a security clearance¹³ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁴ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹⁵

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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

⁶ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁷ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁸ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁹ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

¹⁰ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

¹¹ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

¹² ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹³ *Egan*, 484 U.S. at 528, 531.

¹⁴ *Id* at 531.

¹⁵ *Egan*, Executive Order 10865, and the Directive.

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 father is a citizen and resident of Bosnia and Herzegovina. She traveled there to visit with him from June-August 2002, July-August 2003, and June-August 2004. While on other trips to visit her daughter in Italy, Applicant took side trips to again visit with her father in Bosnia and Herzegovina. She maintains telephonic contact with her father by calling him about three times annually. Disqualifying Condition (DC) 7(a): *contact with a foreign family member . . . 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* applies.

Applicant's relationship with her husband is marital in name only. Shortly after they arrived in the United States they amicably decided to separate to allow him to return to Bosnia and Herzegovina while she remained to raise their children in the United States. Their contact was casual at best during her multiple visits to Bosnia and Herzegovina. While she initially sent him gifts of money on special occasions after they separated, she has not done so for the past several years. They have now lived separate and apart for more than ten years and her testimony and actions make clear that she has no continuing affection for him and that there is virtually no possibility they will ever again live as husband and wife.

Applicant has had minimal contact with her half-brother who is a citizen of Bosnia and Herzegovina but a resident of Serbia. Applicant has had almost no contact with her sister-in-law who resides in Bosnia and Herzegovina since Applicant fled from there in 1992. Applicant's relationship to and contact with her husband, half-brother and sister-in-law do not create an independent security concern. Whatever slight concern may arise from those relationships and contacts is completely negated by application of Mitigating Condition (MC) 8(c): *contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*.

Applicant left Bosnia and Herzegovina in 1992, and she has resided in the United States since 1998. She has been a U.S. citizen since March 2004, and she has possessed a U.S. passport since April 2004. Her children have both become U.S. citizens, and Applicant and her children have resided continuously in the United States since they were admitted as refugees in 1998. They have all earned college degrees in the United States, including an advanced degree by Applicant.

Applicant worked continuously, frequently at multiple jobs, since shortly after she arrived in the U.S. until her employment was terminated pending resolution of the security clearance issues alleged in the SOR. Her employment has included service with the U.S. Army in Kosovo where she was permitted access to classified information without incident. While serving with the Army, Applicant complied with notice requirements by informing her superiors of her travels to Italy and Bosnia and Herzegovina and obtaining the needed permission to engage in such travel.

Applicant's daughter is married and, as of the date of the hearing, had one child and was expecting a second. Her daughter has served continuously in the U.S. military since 2002, including service outside the United States. Her daughter is currently a first lieutenant in the full-time Army National Guard and possesses a security clearance. Applicant's son is working and pursuing an MBA at a university in the United States.

The available information about Bosnia and Herzegovina presents a somewhat complex picture. On the one hand, the country has in recent history been literally torn apart by a civil war that left thousands of its citizens dead or displaced. Like many countries in today's world, it continues to be affected by terrorist activities and may be serving as a transit point or recuperation area for terrorists. Additionally, it has a poor but, at least in some areas, improving human rights record.

On the other hand, U. S. officials have lauded Bosnia's efforts in the fight against terrorism, and, in his 2002 State of the Union Address, President Bush singled out Bosnia specifically for praise for its cooperation with the United States. Bosnia and Herzegovina's law enforcement organizations have cooperated with the United States on international counterterrorism issues. Additionally, Bosnia and Herzegovina continued its deployments in support of MNF-I, and its armed forces have undertaken specialized training that will allow for further deployments to Iraq or to support Operation Enduring Freedom.

Weighing Applicant's affection for her father, and considering his age, economic independence, the 17 years that have passed since she fled from Bosnia and Herzegovina without adverse consequences or events befalling him, the very limited telephonic contact they currently have, and her lack of intent to return to Bosnia and Herzegovina for future visits, against her demonstrated attachment and devotion to the United States and all available information about Bosnia and Herzegovina, I am satisfied that MC 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. applies.*

Additionally, considering Applicant's ties to the United States, including her children and grandchildren, her work and educational history while in the United States, which has included service with the U.S. Army in Kosovo and compliance with travel reporting procedures while there, and the extreme sacrifice she has already made to remain in the U.S. by agreeing to separate from her husband of 23 years, I am satisfied that MC 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 applies.*

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions. Each case must be adjudged on its own merits, taking into

consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying conditions, I am convinced Applicant has mitigated the foreign influence security concern that existed in this case. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guideline B is decided for Applicant. It is clearly consistent with the national interest to grant Applicant a security clearance.

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 APPLICANT

Subparagraphs 1.a-g: For Applicant

Conclusion

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.

Henry Lazzaro
Administrative Judge

