



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-18488  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Department Counsel  
For Applicant: *Pro Se*

January 16, 2009

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On July 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines B and C. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 31, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on September 19, 2008. Applicant filed a response to the FORM on November 4, 2008. The case was assigned to me on December 8, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

## Findings of Fact

Applicant was born in Italy in 1959. She moved to the United States with her parents in 1960. In 1972, she became a naturalized United States citizen.

On a trip to Italy in 1981, she became engaged to an Italian citizen. They married in 1984. From 1981 to the present, applicant has lived in Italy.

Applicant has worked for an international organization to which the United States belongs for over twenty years.

Applicant's parents are United States citizens. They have resided in Italy since 1981. Applicant's three siblings are dual citizens of the United States and Italy and reside in Italy. At least two of her siblings have lived in Italy since 1981.

Applicant's three children are dual citizens of the United States and Italy and reside in Italy.

Applicant's mother-in-law and siblings-in-law are citizens and residents of Italy.

Applicant and her husband own their home in Italy. In addition, they own two apartments and vacant land in Italy.

Applicant has voted in Italian elections since 1984.

Applicant currently works as an assistant to a high ranking United States official. The official submitted a letter on applicant's behalf. In it, the official states that the official has had daily contact with applicant since November 2007, the official "simply cannot overemphasize the absolute critical role [applicant] plays" in helping the official carry out the official's duties, applicant has the official's "fullest faith, trust and confidence in her fidelity and loyalty to the United States of America," after reading the SOR and applicant's response to it the official has "absolutely no security issues with [applicant]," and based on the official's experience, the official firmly believes granting applicant a security clearance is clearly consistent with the national interest.

## 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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

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. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

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. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is as follows:

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.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 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” may be disqualifying. Under Paragraph 7.b., “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or

technology and the individual's desire to help a foreign person, group, or country by providing that information” may be disqualifying. Under Paragraph 7.d., “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.” Lastly, under Paragraph 7.e., “a substantial business, financial, or property interest in a foreign country . . . which could subject the individual to heightened risk of foreign influence or exploitation” may be disqualifying.

Applicant’s marriage to an Italian citizen raises obvious concerns under the first three disqualifying conditions. Applicant’s large financial interests in Italy raises concerns under the fourth disqualifying condition.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph 8.a., it is potentially mitigating if an applicant can demonstrate that “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.” Under Paragraph 8.b., it is potentially mitigating if an applicant can demonstrate “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.” Lastly, under Paragraph 8.c., it is potentially mitigating if an applicant can demonstrate that the “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.”

None of the foregoing mitigating conditions is applicable. Applicant’s relationship with her husband, standing alone, creates a risk for foreign influence or exploitation. Applicant provided insufficient credible evidence that it is unlikely she would be placed in a position of having to choose between the interests of Italy and the interests of the United States, or that she is not vulnerable to a conflict of interest.

### **Guideline C, Foreign Preference**

The security concern relating to the Foreign Preference guideline is set forth in Paragraph 9 of the AG, and is as follows:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Paragraph 10 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 10.a., exercising any right or privilege of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member, such as (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country, (5) using foreign citizenship to protect

financial or business interests in another country, and (7) voting in a foreign election, may be disqualifying. All three disqualifying conditions apply.

Paragraph 11 describes potentially mitigating conditions. I have considered them all and conclude none apply.

### **“Whole Person” Analysis**

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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) 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 Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature woman who, after becoming a naturalized United States citizen, moved back to Italy in 1981, married an Italian citizen in 1984, and gave birth to and raised her children in Italy. Except for retaining her United States citizenship and registering her children as United States citizens, she has, for all intents and purposes, no current ties to the United States. In most cases, these facts alone would require denial of her clearance request.

However, this case does not fall in the “most cases” category. This case is unique in the sense that a very senior United States official, who has significant experience and knowledge in the security arena, has stated without equivocation that based on the official’s daily interaction with applicant since late 2007, applicant should be granted a security clearance. This opinion, together with the fact that Italy and the United States are close allies, leads me to conclude that applicant should be granted a clearance based on the “whole person” concept.

### **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:

Guideline B: FOR APPLICANT

Guideline C: FOR APPLICANT

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

JOSEPH TESTAN  
Administrative Judge