



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



In the matter of:)
)
) ISCR Case No. 08-05378
)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

May 20, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guidelines for foreign influence and foreign preference. Accordingly, his request for a security clearance is granted.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), which he signed on November 8, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On December 18, 2008, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guidelines B (Foreign Influence) and C (Foreign Preference) of the Revised Adjudicative Guidelines (AG).² Applicant received the SOR on December 22, 2008. He signed his notarized Answer on January 7, 2009, in which he admitted to all the allegations in the Statement of Reasons, except allegation 1.c. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on February 24, 2009, and the case was assigned to me on February 26, 2009. DOHA issued a Notice of Hearing on the following day, and I convened the hearing as scheduled on March 16, 2009.

During the hearing, Department Counsel offered four exhibits, which were marked as Government Exhibits (GE) 1 through 4, and admitted without objection. Applicant testified and also presented the testimony of one witness. He offered one exhibit, Applicant Exhibit (AE) A, which also was admitted without objection. I held the record open to allow Applicant to submit additional documentation. Department Counsel forwarded without objection Applicant's timely submission of two additional documents. I admitted the additional documents as AE B and C. DOHA received the transcript (Tr.) on March 20, 2009.

Findings of Fact

Applicant's admissions to the SOR allegations are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 37 years old, earned a Master's degree in computer science, and expects to receive a second Master's degree in business administration this year (Tr. 5). Applicant has worked in information technology since the late 1990s, and for federal contractors since 2002 (GE 2). He is currently a principal with a defense contractor (Tr. 56).

Applicant was born in Macedonia, which formerly was part of Yugoslavia (Tr. 39). He came to the United States in 1996, at the age of 24, to earn a graduate degree in computer science. He held a student visa until 1998, at which time he received an H1-B visa (GE 1). Applicant's wife, a dual citizen of the United States and Macedonia, is employed by a federal agency. They married in 1999 and have a 16-month-old daughter.

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

He has not sought Macedonian citizenship for his daughter (Tr. 27). Applicant became a U.S. citizen in February 2007, and received his U.S. passport in April of the same year (GE 2).

In June 2002, before becoming a U.S. citizen, Applicant obtained a Macedonian passport, which is valid until 2012 (GE 4). After becoming a U.S. citizen, he traveled to Macedonia in May 2007, using his Macedonian passport. He has traveled several times since becoming a U.S. citizen. For instance, he traveled to China as part of his graduate school program (Tr. 37). On all these trips--Bulgaria in 2007, and China, Hong Kong, and Macedonia in 2008--he used his U.S. passport (AE B; Tr. 24; 36-37).

Until recently, Applicant did not realize that his foreign passport would present a problem for his security clearance, and only learned that it would when he received the SOR (Tr. 20), and subsequently spoke with Department Counsel about the hearing. Applicant was not aware of the requirement to destroy or surrender his foreign passport. "I have never received any help from the Security Office of the company....And it has come to my attention that it is possible to actually surrender the passport, and I actually would like to get some guideline [*sic*] on this, whether this is true or not." (Tr. 17-18). Following the hearing, Applicant submitted a notarized letter signed by his employer's Facility Security Officer, attesting that Applicant had surrendered his foreign passport. If Applicant requests return of the passport while he holds a security clearance, DOHA will be informed by his employer (AE C).

Applicant does not remember saying during his security interview that he intended to vote in Macedonian elections (SOR allegation 1.c.; Tr. 19). He did not vote in the Macedonian parliamentary elections in 2008, which occurred after he became a U.S. citizen, and has no intention to vote in upcoming elections (Answer; Tr. 19-20). He did visit the Macedonian embassy at times in the past. His last visit occurred in October 2005, before he became a U.S. citizen (Tr. 20).

Applicant's parents, brother and in-laws are citizens of Macedonia and live there. He keeps in touch with his parents about once or twice per month, by phone or email, and with his brother less often, approximately once per month. He speaks with his in-laws every month or two. When he visits Macedonia, he stays with his mother and visits his own and his wife's family. His parents are in their 60's. Approximately 20 years ago, his mother was employed as a judge in a district court (GE 4), but she is now in private law practice. His father is a professor. Applicant identified the university that employs him as an educational institution affiliated with the government (GE 4). Applicant's father performed mandatory service in the Yugoslavian military in the 1970s for approximately one year. Applicant's brother did not serve in the military. Applicant is not aware that any of his family, or his wife's family, have had involvement with the Macedonian authorities, or have been involved in political activism. He does not provide financial support to any family members or in-laws in Macedonia. His mother-in-law is a kindergarten teacher in a public school and his father-in-law is a bank clerk. (GE 4; Tr. 30; 38-42).

Applicant's friend, a U.S. Army Lieutenant Colonel, testified. He has served in the military for 26 years, and has held a security clearance since 1978, including Top Secret since 1995. He has known Applicant for five years. The witness volunteered to appear on Applicant's behalf. He testified that Applicant came to the United States to better himself (Tr. 46). The witness was present when Applicant was sworn in as a U.S. citizen, and they talked about what it means to be an American. The witness met Applicant's mother and in-laws when Applicant's daughter was born. He testified that Applicant has built his life in the United States, with his wife and daughter, and he wants his daughter to grow up to be an American. Applicant has worked on federal contracts for years and is highly trustworthy, stable and reliable (Tr. 44-52).

Policies

Each security clearance decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).³ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an Applicant. However, specific applicable guidelines should be followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁴ for an Applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to Applicants to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, Applicants bear a heavy burden of persuasion.⁵ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The government has a compelling interest in ensuring that Applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant's suitability for

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

access to classified information in favor of the government.⁶

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to foreign influence:

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.

The relevant disqualifying condition⁷ in this case is AG ¶ 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.

Applicant's parents, a sibling, and his in-laws live in Macedonia. He has an ongoing relationship, keeping in touch with his parents twice per month and his brother about once per month. He visits the country to see his family, and he stays with his mother during these visits. When his first child was born, his relatives visited and stayed with him in the United States. These foreign ties pose a potential conflict of interest, and AG ¶ 7(b) applies.

The foreign influence guideline also includes factors that can mitigate disqualifying conditions. Under AG ¶ 8, the following mitigating conditions are relevant:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

⁷ Department Counsel stated that heightened risk is not a concern, given the country under consideration in this case (Tr. 62). Therefore, disqualifying conditions AG ¶¶ 7(a), (d) and (e) are not at issue.

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 United States;

(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.

Based on the nature of the country involved, it is unlikely that Applicant would be placed in a position that would force him to choose between the interests of the United States and those of his foreign relatives. Macedonia is in the process of applying for NATO membership. It is an ally of the United States. Department Counsel noted that the two countries have a “very close friendly relationship” and that Macedonia does not pose a high risk (Tr. 62; 65-66). Mitigating condition AG ¶ 8(a) applies.

Applicant's ties to the United States also weigh in his favor when evaluating the question of potential conflicts of interest. Applicant came to the United States to further his education, and for a better life. He worked toward and succeeded in his goal by earning one Master's degree, and soon, a second one. He has been employed here for 12 years, and has contributed to federal projects since 2002. His wife also works for the U.S. government. He has been a homeowner in the United States since 2003. His child was born here, and it is noteworthy that he has not sought foreign citizenship for her. Applicant has established strong ties to the United States. I conclude that he would choose these ties over his foreign connections, in the unlikely event that a conflict of interest arose. AG ¶ 8(b) applies. I find for Applicant on Guideline B.

Guideline C, Foreign Preference

The security concern involving foreign preference arises

[W]hen 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. (AG ¶ 9)

Under AG ¶ 10, the following disqualifying condition is relevant:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport;... (7) voting in a foreign election...

Applicant acquired a Macedonian passport in 2002, before he became a U.S. citizen, and it remains valid until 2012. AG ¶ 10(a)(1) applies. Applicant used his foreign passport one time to enter and exit Macedonia after attaining U.S. citizenship. Applicant credibly testified that he was not advised by any security official that this act had implications for his security clearance. He has traveled to foreign countries several times since 2007, including Macedonia, but has used only his U.S. passport.

The SOR alleges that Applicant intended to vote in future foreign elections, implicating AG ¶ 10(a)(7). However, this disqualifying condition requires that an Applicant has exercised a right of foreign citizenship by actually voting. Applicant has not voted in a Macedonian election since becoming a U.S. citizen, including one that occurred recently in 2008. He has no intent to do so in the future. AG ¶ 10(a)(7) does not apply.

The following mitigating condition under AG ¶ 11 is relevant:

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Initially, Applicant was unaware that his valid foreign passport represented a security concern. After speaking with Department Counsel, he learned how to meet the requirement to surrender or destroy it. Within hours of the end of the hearing, Applicant surrendered his foreign passport to his Facility Security Officer, and had a notarized confirmation forwarded to DOHA. If he requests return of the passport, DOHA will be informed. AG ¶ 11(e) applies. I find for Applicant on Guideline C.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that 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. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has an ongoing relationship with immediate family members in a foreign country. They are in fairly frequent contact, and he has traveled to Macedonia several times since 2004. However, given the nature of the country involved, and Applicant's significant ties to the United States, he would resolve any unlikely conflict of interest in favor of the United States. Applicant held a valid foreign passport after he became a U.S. citizen. He was never put on notice that it represented a security problem, and he used it one time without realizing that it would raise such issues. Applicant surrendered his passport to his FSO, and supplied evidence that it is in the control of his employer's security department. DOHA will be informed if Applicant requests the passport, eliminating the possibility that Applicant could use the passport while he holds a security clearance.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline B Subparagraph 1.a. - 1.e.	FOR Applicant For Applicant
Paragraph 2, Guideline C Subparagraph 2.a - 2.h.	FOR Applicant For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge