



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-09832
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro se*

August 31, 2010

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on December 7, 2007 (Government Exhibit 1). On August 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on August 24, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 21, 2009. I received the case assignment on September 24, 2009. DOHA issued a notice of hearing on September 28, 2009, and I convened the hearing as scheduled on October 27, 2009. The Government offered Government Exhibits 1

through 5, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through D, which were also admitted without objection. DOHA received the transcript of the hearing, and the record closed on November 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant was 57 at the date of the hearing, and married to his second wife. He is employed by a defense contractor, and seeks a security clearance in connection with his employment in the defense industry. Applicant admitted the factual allegations in the SOR. Those admissions are hereby deemed findings of fact. However, he denied that his status or conduct shows that he is ineligible for a security clearance. He also provided additional information to support his request for eligibility for a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country instead of the United States.

Applicant was born in Romania and grew up in Czechoslovakia. After the fall of the Iron Curtain, and the split up of Czechoslovakia, he was determined to be a Slovak citizen. He went to college in Czechoslovakia and received a master's degree. In 1975 and 1976, he served in the Czechoslovak Army, as was required of all men.

Applicant met his second wife in Slovakia in the mid-1990s. She was born in Czechoslovakia, and became an American citizen in 1988. They were married in the United States in 1997. Applicant became an American citizen in 2004. (Government Exhibit 1 at Section 8.)

Applicant has retained his Slovak citizenship to preserve his pension or retirement rights in Slovakia. Applicant worked for a state-owned heavy industry company first in Czechoslovakia, then Slovakia, from 1975 through 1997. This company is now owned by an American firm. Because of his 22 years of employment, the Applicant has acquired significant pension rights in Slovakia. According to the Applicant, this pension is administered by the Slovak government, and not the American company that now owns his former employer. Applicant also indicated several times that he believes he must retain his Slovak citizenship in order to keep those pension rights. Applicant has no intent or desire to revoke his Slovak citizenship, due to his pension rights. (Government Exhibit 1 at Section 8, Exhibit 2 at 7-8; Transcript at 31-36, 56-59.)

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

Applicant has two married daughters from his first marriage who are Slovak citizens and live in Europe. One lives in the Czech Republic and the other in Spain. None of the Applicant's relatives in Europe have any connection with any European government. He contacts them on a fairly regular basis. (Government Exhibit 2 at 3-6; Transcript at 41-48, 51-52.)

Applicant travels to Europe about every year to visit his daughters. He does not have a valid Slovak passport and only uses his American passport while traveling. (Transcript at 33-34, 38-39, 49-50.)

Mitigation

Applicant has substantial personal and financial interests in the United States. His wife is a naturalized American citizen. Her children, the Applicant's step-children, are all native-born Americans and currently live in the United States. The Applicant's net worth is about \$700,000. (Transcript at 36-39, 48-54.)

Applicant is a respected person in his field. He submitted two letters of recommendation. One was from his Director, who describes the Applicant as showing "loyalty, dedication and commitment." (Applicant Exhibit A.) A coworker describes the Applicant as "a fine upstanding citizen." (Applicant Exhibit B.)

Applicant submitted two recent Performance Management Worksheets. He met or exceeded expectations in every category. (Applicant Exhibits C and D.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 commonsense 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. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her knowledge of the law, human nature and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving

that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

Applicant has not mitigated the Government's concerns about his dual citizenship with Slovakia. The concern is stated thus under this Guideline, *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.*

In this case the Government has met its initial burden of proving by substantial evidence that Applicant is a dual citizen of Slovakia and the United States, and that he has no intention of revoking his Slovak citizenship in order to protect his possible pension benefits in Slovakia. The Applicant's one year of service in the now defunct Czechoslovak Army is mitigated because it occurred over 30 years ago, during a time when he was a citizen of that country.

Applicant continues to be a dual citizen of the United States and Slovakia, and does not intend to change that situation in the near future. Accordingly, AG ¶10 applies to the facts of this case: *Conditions that could raise a security concern and may be disqualifying include: (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: (5) using foreign citizenship to protect financial or business interests in another country.*

The Applicant has repeatedly stated that he will not revoke his Slovak citizenship. AG ¶11(b) does not apply to this case: *the individual has expressed a willingness to renounce dual citizenship.* None of the other mitigating conditions are applicable to this case. Guideline C is found against the Applicant.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled 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.

The Applicant has family connections to Slovakia, the Czech Republic and Spain. He travels to Europe on a fairly frequent basis to visit his two daughters.

The following Disqualifying Conditions apply to this case based solely on the facts:

AG ¶7.(a) contact with a foreign family member . . . 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; (b) connections to a foreign person . . . 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 . . . by providing that information.

Applicant has proved that he is a conscientious and patriotic citizen, and member of the defense industry. He has substantial family and financial ties in the United States that outweigh his relationship to any European country, except as discussed under Guideline C, above. While he still has family in Europe, the Applicant has shown that his loyalties are to the United States.

Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background:

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.; and (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 my analysis of the available information, the Applicant has overcome the adverse inference of his family members' presence in Europe. Guideline B is found for the Applicant.

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. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and C analysis is applicable to the whole-person analysis as well. The evidence shows that the Applicant is a patriotic American citizen. The problem here is that he is consciously retaining his Slovak citizenship in order to protect pension or retirement benefits from that country. For that reason, I cannot find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, the Applicant has not mitigated the security significance of his foreign preference and is not eligible for a security clearance.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. Paragraph 2 is found for the Applicant.

Formal Findings

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

Paragraph 1, Guideline C:	AGAINST THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c:	For the Applicant
Paragraph 2, Guideline B:	FOR THE APPLICANT
Subparagraph 2.a:	For the Applicant
Subparagraph 2.b:	For the Applicant
Subparagraph 2.c:	For the Applicant
Subparagraph 2.d:	For the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge