



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 10-02619
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

June 8, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing on November 11, 2009. (Government Exhibit 1.) On February 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on March 1, 2011, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on March 17, 2011. A notice of hearing was issued on March 24, 2011, scheduling the hearing for April 12, 2011. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant presented nine exhibits, referred to as

Applicant's Exhibits A through I, which were admitted without objection. She also testified on her own behalf. The record remained open until close of business on April 26, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit that was admitted without objection. The official transcript (Tr.) was received on April 21, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 55 years of age and has a Ph.D in Electrical Engineering. She is employed as a Professor for a state university in the United States. She seeks a security clearance in connection with her work with the government.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Liverpool, England in 1955. She grew up in England, and earned her doctorate degree. At the age of twenty-two, she immigrated to the United States, where she has lived since then. In 2001, she became a naturalized United States citizen, and considers herself only a citizen of the United States. (Tr. p. 36.) She is married and has two adult daughters, one is 18, the other is 20 years old.

Her spouse, who was born in Italy, and immigrated to the United States at the age of 24, is a dual citizen of Italy and the United States. He is 62 years old. About two years ago, when their younger daughter expressed interest in doing part of her medical training in Italy, the Applicant's husband reinstated his Italian citizenship to make it possible for her to have Italian residency. This will also give her the opportunity to work in an Italian hospital. The Applicant's older daughter is completing her Ph.D this summer and has accepted a post-doctoral position in Holland.

The Applicant maintains two joint bank accounts in Italy. (Government Exhibit 2.) One with a balance of approximately \$190,000 and the other one with \$20,000. (Tr. p. 41, Government Exhibit 1 and Applicant's Post-Hearing Exhibit.) The accounts were opened about twelve years ago when they started investing in family vacation property in Italy. The Applicant and her husband also own two properties in Tuscany, Italy worth approximately \$200,000 and \$400,000 in United States dollars. (Government Exhibit 1 and Applicant's Post-Hearing Exhibit.) She travels to Italy for vacations at least once a year and stays two to three weeks. One of her homes she uses on vacations, the other she rents out. Her real-estate investments necessitate a bank account for rent deposits and repairs. Her total assets in Europe total \$910,000. (Applicant's Post-Hearing

Exhibit.) The purpose for the bank accounts at this time is to help with their daughter's expenses. The Applicant also explained that when they travel to Italy they find that it is much easier to get cash through the ATM if they have an Italian account than if they are trying to get it through the exchange rates from a foreign account. (Tr. p. 42.) The Applicant also has one bank account in Austria that has a balance of about \$100,000. Since the Applicant's husband does not trust the banks in Italy, they maintain the bank account in Austria as a back up.

The Applicant's assets in the United States are significantly larger than the assets she holds in Italy and Austria. Her net worth in the United States totals approximately 4 million dollars that includes her personal residence, retirement accounts, and mutual funds. (Applicant's Post-Hearing Exhibit.) As stated above, her financial assets in Italy and Austria combined is about \$910,000. (Tr. p. 48.) The Applicant is currently looking for a retirement home in the United States and plans to pay about 1.3 million dollars for it. (Tr. p. 51.) She votes only in United States elections. She testified that she would never do anything to jeopardize the national interest of the United States. (Tr. p. 53).

The Applicant also has a sister-in-law and brother-in-law who are citizens and residents of Italy. She states that her allegiance and loyalties are to the United States, even though she is fond of England. (Tr. p. 44.)

A letter dated February 18, 2011, from a United States Congressman to a State Governor is highly complimentary of the organization for which the Applicant is the Executive Director. (Applicant's Exhibit G).

A letter dated April 10, 2011, from the current chair of a Studies Board of a prestigious government organization, who has known and worked with the Applicant for about ten years, indicates that the Applicant is trustworthy, responsible, and highly regarded with an excellent reputation in her field, especially in areas of interest to the defense community. She is also described as objective, practical, has technically relevant knowledge and a genuine interest in doing the right thing for the greater good. She is highly recommended for a position of trust. (Applicant's Exhibit I.)

The Applicant has contacts and financial interests with Italy. Accordingly, it is appropriate to discuss the situation in Italy at this time. Italy has been a democratic republic since June 2, 1946, when the monarchy was abolished by popular referendum. The United States enjoys warm and friendly relations with Italy. Italy is a leading partner in counter-terrorism efforts. The two are NATO allies and cooperate in the United Nations, in various regional organizations, and bilaterally for peace, prosperity and security. Italy has worked closely with the United States and others on such issues as NATO and UN operations as well as on assistance to Russia and the New Independent States; Lebanon; the Middle East peace process: multilateral talks; Somalia and Mozambique peacekeeping; combating drug trafficking, trafficking in women and children, and terrorism. (Government Exhibit 3.)

The Applicant also has a financial interest in Austria. Austria is a federal parliamentary democracy. Since 1955, Austria has enjoyed political stability. The 1955 treaty recognized Austria as an independent sovereign state and since then Austria has based its foreign policy on neutrality. In recent years, Austria reassessed its definition of neutrality, granting overflight rights for the UN-sanctioned action against Iraq in 1991, and since 1995 contemplating participation in the EU's evolving security structure. Also in 1995, it joined the Partnership for Peace with NATO, and subsequently participated in peacekeeping missions in Bosnia. Austria is active in the United Nations and currently holds a non-permanent seat on the UN Security Council for the period of 2010 to 2011. It has participated in peacekeeping missions since 1960, with particular emphasis on the Balkans. Austria's political leaders and people recognize the essential role the U.S. played in the country's reconstruction and in the Austrian State Treaty. It is in the interest of the U.S. to maintain and strengthen these relations and to maintain Austria's political and economic stability. (Government Exhibit 4.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

7.(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact

creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

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.

Conditions that could mitigate security concerns:

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.;

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;

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;

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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

a. The nature, extent, and seriousness of the conduct and surrounding circumstances;

b. The circumstances surrounding the conduct, to include knowledgeable participation;

c. The frequency and recency of the conduct;

d. The individual's age and maturity at the time of the conduct;

e. The extent to which the participation was voluntary;

f. The presence or absence of rehabilitation and other permanent behavioral changes;

- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in 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.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's financial interests and foreign relationships and her ability to effectively safeguard classified information.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that there is not conflict and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections and/or foreign interests may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSION

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and 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 apply. However, Mitigating Conditions 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., 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, 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, and 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 also apply.*

The Applicant's financial assets in Italy and Austria that include bank accounts and investment properties that total approximately \$910,000, although significant, value only 20 percent of her wealth in the United States. The Applicant's net worth in the United States of 4 million dollars is substantially more than what she has in Europe. When she travels to Italy it is simply for vacation purposes and she stays at her own home. She also has a sister-in-law and brother-in-law who are citizens and residents of Italy.

The current political situation in Italy and Austria does not elevate the cause for concern in this case. Furthermore, the evidence shows that the Applicant has no bond and affection with her foreign family members or to any foreign individual, or to Italy, or Austria, in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. The Applicant chose to leave her family and country of birth and immigrate to the United States. She values the liberties and opportunities the United States has provided her, and has made it her permanent home. She now wants to give back to the United States by serving the Government. Her permanent home, her spouse and her loyalties are in the United

States. There is no possibility of foreign influence that could create the potential for conduct resulting in the compromise of classified information. She has demonstrated that she can be trusted with sensitive classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant
Subpara. 1.b.: For the Applicant
Subpara. 1.c.: For the Applicant
Subpara. 1.d.: For the Applicant
Subpara. 1.e.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge