



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



In the matter of:

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ISCR Case No. 10-06774

Applicant for Security Clearance

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

05/23/2012

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant, a 1995 naturalized U.S. citizen, has minimal connections to the United States other than his job, a \$30,000 retirement plan, and \$30,000 in savings accounts. Although he has been working for U.S. government contractors since 1995 in support of deployed U.S. personnel, whenever he is on leave, in between jobs, or laid off from his job, he returns to Hungary to live with his parents, his long-time girlfriend, and their 13-year-old daughter. He has substantial emotional, property, and financial interest in Hungary compared to those in the United States. His substantial interests in Hungary could subject him to a risk of foreign influence or exploitation. Foreign influence concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 30, 2009. On December 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under

Guideline B (foreign influence).<sup>1</sup> Applicant answered the SOR (undated), and requested a hearing before an administrative judge. The case was assigned to me on February 21, 2012.

DOHA issued a notice of hearing on March 9, 2012, convening a hearing for April 11, 2012. At the hearing, the Government offered exhibits (GE) 1 through 3. Applicant testified, and he submitted exhibits (AE) 1 through 3. AE 3 was received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on April 20, 2012.

### **Findings of Fact**

Applicant admitted all of the SOR factual allegations. His admissions are incorporated in the findings of fact. After a complete and thorough review of the evidence of record, and having observed Applicant's demeanor and considered his testimony, I make the following findings of fact.

Applicant is a 49-year-old linguist and operations manager working for a defense contractor. He was born, raised, and educated in Hungary. He served one year in the Hungarian army. In 1987, he was awarded a bachelor's degree with a double major in Russian and English studies from a Hungarian university. He married his first wife in 1985, and they were divorced in 1994. He married his second wife in December 1995, and they were divorced in 2001. He has a long-term, close relationship with his Hungarian girlfriend. When he is not deployed working for a government contractor, he lives in Hungary with his girlfriend, and their 13-year-old daughter.

In 1988, Applicant and his first wife left Hungary. They were afraid of possible reprisals against them by the Soviet Union-sponsored government, which controlled Hungary. He entered the United States in December 1989, and was granted political asylum. Applicant became a naturalized U.S. citizen in March 1995. That same year, he was awarded a master's degree in English by a U.S. university.

From December 1995 until June 2004, Applicant worked for a government contractor as a linguist, interpreter, and cultural advisor. He provided support to deployed U.S. troops in Hungary. During this period, Applicant was granted access to classified information at the secret level because of his job as a linguist. He received the Commander's Award for Public Service for his loyalty, professionalism, and performance while providing support to U.S. personnel. He testified that he saved the command \$100,000 during some contract negotiations with the Hungarian government. Applicant is very proud of his award and the job he performed in support of U.S. personnel.

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<sup>1</sup> DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

In June 2004, Applicant was laid off from his job when the U.S. mission in the Balkans ended. Between June 2004 and September 2006, Applicant worked during certain periods for corporations in different European nations. He was also unemployed for extended periods of time.

Between September 2006 and May 2008, Applicant was hired by another U.S. government contractor. He was deployed to Iraq in support of U.S. personnel. During this period, he came under mortar fire several times. In October 2009, Applicant was hired by his current employer, a government contractor providing support to U.S. personnel in Afghanistan, to be the operations manager for the contractor in Afghanistan. Applicant's current position does not require him to have a security clearance to do his job. However, he will need a clearance to be promoted and continue his career progression.

Applicant's parents are citizens and residents of Hungary. His mother is 71 years old, and his father is 73 years old. Both are retired and they receive a small pension from the Hungarian government. Applicant gives his parents approximately \$2,000 a year to supplement their income. His parents own a home in Hungary with an approximate value of \$100,000, and a vacation property. Applicant gave his parents approximately \$50,000 for them to purchase land and build a vacation home. Both properties are in his parents' names. Applicant testified that he does not own any property, and he has no financial interests in Hungary. He also does not have a Hungarian passport, identification card, bank account, or driver's license.

Applicant claimed that during the last three years he tried to sell the vacation home but he was unsuccessful due to the poor housing market. He intends to reduce the selling price of the vacation home to sell it as soon as possible. He expects to inherit his parents' home when they pass away. Applicant intends to purchase a home in the United States with the proceeds of the sale of his parent's vacation property.

As of his hearing date, Applicant did not own, nor was he renting any property in the United States. His only financial interests in the United States are related to his job with a government contractor (salary), a \$30,000 retirement account (401(k)), and around \$30,000 in savings that he has in several U.S. bank accounts. Applicant established a small company in the United States to provide Internet-based linguist/translation services. He is in the process of developing the software, but needs money to do so.

Applicant has been in a close relationship with his girlfriend since 1996. She has two children of a prior marriage, a son age 21, and a 19-year-old daughter. Applicant and his girlfriend have a 13-year-old daughter. His daughter is a dual U.S.-Hungarian citizen. Applicant's girlfriend owns her own home in Hungary and she takes care of their daughter on a daily basis. Applicant provides \$1,000 a month in financial support to his girlfriend and daughter. Whenever Applicant is on vacation, in between jobs, or unemployed, he joins his family in Hungary. If he is working outside of Hungary, he

maintains contact with them on a daily basis through Skype or the Internet. Applicant also maintains contact with two Hungarian associates.

Since 1995, Applicant has not maintained a permanent residence in the United States. He only comes to the United States to apply for, process in, or receive training for a new position with a government contractor. On those occasions when Applicant visited the United States, he lived with friends and used their addresses as his home-of-residence address.

Applicant testified that he intends to live in the United States after his employment contract expires. He also intends to retire in the United States. He would like his daughter to attend high school in the United States to prepare herself for college. He needs the income from his current job to save money to establish a home for him and his daughter in the United States. Applicant does not believe that his girlfriend or his parents will come to live with him in the United States. His girlfriends' late husband was killed in a car accident by an American soldier. She does not want to live in the United States on a permanent basis. He believes that his parents and his girlfriend will come to visit him and his daughter frequently.

Applicant noted that it was his choice to come to live in the United States and to become a naturalized U.S. citizen. In 1995, he volunteered to work for government contractors in support of U.S. personnel in the Balkans, and he has continued to support U.S. missions in Iraq and Afghanistan. He has not been able to live in the United States, purchase a home, or maintain a rental place because he is always deployed. He was granted a secret security clearance in 1995, even though his parents, girlfriend, and daughter were in Hungary. There is no evidence to show that Applicant has compromised or caused others to compromise classified information.

Hungary was under Soviet control and had a communist government from 1947 until around 1989. Hungary's current government is a Western-style parliamentary democracy with national parliamentary elections held every four years. Since 1973, Hungary and the United States have participated in bilateral agreements that have improved the relations between the two countries. Since 1990, Hungary's top foreign political goal has been achieving integration into Western economic and security organizations. To this end, Hungary joined NATO in 1999 (becoming a formal ally of the United States), and the European Union in May of 2004. The U.S. Government continues to work with Hungary as a valued partner in the transatlantic relationship. Hungary joined the Visa Waiver Program on November 17, 2008.

## **Policies**

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, [he or she] 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.

AG ¶ 7 indicates four conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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;

(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; and

(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;

Applicant's relationship with his parents, girlfriend, daughter, and associates living in Hungary is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" his relatives, girlfriend, and associates living in Hungary. See ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). He has close affection for his parents, girlfriend, and daughter living in Hungary. His communications with them are frequent, and he provides financial support to them on a regular basis.

The mere possession of close family ties with family living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is

known to conduct intelligence collection operations against the United States, or the country has a significant problem with lawless elements or terrorists.

There is no evidence to show that the relationship of the Hungarian government with the U.S. Government should raise a heightened security concern. The United States and Hungary's governments have improved ties since 1973. Nevertheless, Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his family living in Hungary.

There is no evidence that intelligence operatives from Hungary or terrorists seek or have sought classified or economic information from or through Applicant or his family living in Hungary. Nevertheless, his relationships with his family living in Hungary create a potential conflict of interest. His relationship with them is sufficiently close to raise a security concern about his desire to assist them by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his family living in Hungary, raising the issue of potential foreign pressure or attempted exploitation. Furthermore, Applicant has substantial financial and property interests in Hungary, which could subject him to an increased risk of foreign influence or exploitation. His financial and property interests in Hungary outweigh his financial interests in the United States. AG ¶¶ 7(a), 7(b), 7(d), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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.;
- (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;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(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.

Applicant immigrated to the United States in 1988, and he lived in the United States for seven years. In 1995, he took a position with a government contractor in Hungary, and since then his contact with the United States has been mostly through his work. In 1995, Applicant terminated his lease on his rental home because he was going on a long-term deployment. Since then, his mailing addresses in the United States have been the residences of friends who receive his correspondence. Applicant neither owns nor rents property in the United States. He has no family in the United States. His interests in the United States consist of his job with a government contractor, \$30,000 in a retirement plan (401(k)), and \$30,000 dollars in several U.S. bank accounts that he can access from overseas.

Applicant has strong affection and obligation for his parents, girlfriend, and daughter living in Hungary. Whenever he is not working (either because he is laid off, on vacation, or in between jobs). Applicant returns to Hungary to be with them. He provides his parents with \$2,000 yearly in financial support, and he provides his girlfriend and daughter with \$1,000 a month in financial support. Applicant claims he does not own any property in Hungary; however, he will inherit his parents' \$100,000 home in Hungary. Additionally, he gave his parent's \$50,000 to build a vacation property in Hungary. Appellant stays in that vacation home when he visits Hungary.

Considering the evidence as a whole, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives, friends, and associates who are Hungarian citizens and living in Hungary] could create a risk for foreign influence or exploitation."

AG ¶¶ 8(a) to 8(c), and 8(f) have limited applicability and do not mitigate the foreign influence concerns. The governments of Hungary and the United States currently have good relations based on similar interests. However, Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family living in Hungary.



Although there is no evidence that Hungarian government agents, terrorists or criminals have approached or threatened Applicant or his family living in Hungary because of his work for the United States, he is nevertheless potentially vulnerable to threats and coercion made against his family living in Hungary.

A key factor in the AG ¶ 8(b) analysis is whether Applicant has “deep and longstanding relationships and loyalties in the U.S.” Applicant has worked well for government contractors providing valuable services to deployed U.S. personnel in Hungary, Iraq (where he came under hostile fire), and in Afghanistan. To a certain extent, his actions show that “[he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” Notwithstanding, Applicant was born in Hungary. In 1988, he immigrated to the United States, and he became a U.S. citizen in 1995. Since then, he has lived outside of the United States. He has no family, property, or substantial financial interests in the United States. His anticipated financial and property interests in Hungary are more substantial than those in the United States.

AG ¶ 8(d) does not apply because Applicant’s contacts and relationships with his family in Hungary are not on behalf of the U.S. Government. AG ¶ 8(e) is not raised by the facts in this case and it does not apply.

In sum, Applicant’s connections to his family living in Hungary remain very significant to him. Even though he is a naturalized U.S. citizen and he has been working for U.S. contractors, his connections to the United States are insufficient in light of his extensive personal, familial, property, and financial interests in Hungary. The mitigating information taken together is insufficient to fully overcome the foreign influence security concerns under Guideline B.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c))

The whole-person factors weighing towards approval of Applicant’s security clearance are important; however, they are insufficient to warrant approval of his access to classified information. He is 49 years old, and he is mature and responsible. He immigrated to the United States in 1989. He became a U.S. citizen in 1995, and was awarded a master’s degree from a U.S. university. He has worked well for government contractors from 1995 to present, except for approximately three years he worked for foreign contractors. He has provided a valuable service to U.S. personnel serving overseas. He possessed a secret security clearance while working for a government contractor from 1995 until 2004. There is no evidence to show that he compromised or caused others to compromise classified information. He intends to bring his daughter to study in the United States, and he plans to retire in the United States.

The factors supporting a continuing foreign influence security concern and denial of Applicant’s security clearance because of Applicant’s connections to Hungary are

more significant than the factors weighing towards approval of his access to classified information. Applicant was born, raised, and educated in Hungary, which was then controlled by the Soviet Union.

Applicant's daughter is 12 years old, and she is a dual citizen of the United States and Hungary. His parents and his long-term girlfriend (the mother of his daughter) are citizens and residents of Hungary. Applicant has strong feelings of affection and obligation to his family. He communicates with them frequently, provides them with financial support, and he stays with his girlfriend or family in Hungary whenever he is not working. Applicant's financial and proprietary interests in Hungary are substantially more than those in the United States. Applicant's parents and his girlfriend are not interested in residing in the United States.

A Guideline B decision concerning Hungary must take into consideration the geopolitical situation in Hungary, as well as the dangers existing in Hungary.<sup>2</sup> Hungary was under Soviet control and had a communist government from 1947 until 1989. The United States and Hungary became allies when Hungary joined NATO in 1999. The United States and Hungary share many interests, such as peace in the Balkans and fighting terrorism. Hungary and the United States have close relationships in many areas of diplomacy and trade. However, even when all these factors are weighed, there continues to a risk that lawless Hungarian elements will attempt to coerce family members of security clearance holders to obtain classified or sensitive information. Applicant has not fully mitigated the foreign influence security concern.

### **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:                   AGAINST APPLICANT

Subparagraphs 1.a-1.h:                   Against 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.

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JUAN J. RIVERA  
Administrative Judge

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<sup>2</sup>See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).