



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



In the matter of:

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ISCR Case No. 10-07127

Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

09/28/2012

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant, a U.S. citizen naturalized in 1999, exercised his Romanian citizenship when he renewed his Romanian passport and other Romanian personal identification documents in 2011. He renewed his passport to protect substantial property interests in Romania. He anticipates spending significant periods of time in Romania taking care of his elderly mother. He does not anticipate divesting himself of his substantial property interest in Romania in the near future. His access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 25, 2010. On February 29, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) (amended on March 30, 2012) listing security concerns under Guideline B (foreign influence) and Guideline C (foreign

preference).<sup>1</sup> Applicant answered the SOR on April 16 and May 7, 2012, and requested a hearing before an administrative judge. The case was assigned to me on July 16, 2012.

DOHA issued a notice of hearing on July 18, 2012, scheduling a hearing for July 30, 2012. At the hearing, the Government offered exhibits (GE) 1 and 2. Applicant testified, and submitted exhibits (AE) 1 and 2. DOHA received the hearing transcript (Tr.) on August 6, 2012.

### **Procedural Rulings**

Department Counsel moved to substitute (*in toto*) the April 16, 2012 SOR for the SOR issued on February 29, 2012. Applicant answered the amended SOR on May 7, 2012. The amendment was granted without objections.

Applicant requested an expedited hearing. At his request, the hearing was scheduled for July 30, 2012 -- 12 days after he was issued the hearing notice. At his hearing, Applicant affirmatively waived his right to have 15 days advanced notice of the hearing. He had sufficient time to prepare and was ready to proceed.

### **Findings of Fact**

Applicant admitted all 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 52-year-old electronics engineer employed with a Defense contractor. He was born, raised, and educated in Romania. He was awarded a bachelor's degree in Romania in 1983, and a master's degree in 1984, both in electrical engineering. His education was funded by the then Romanian communist government. He also completed one year of mandatory military service in Romania during 1984-1985. Applicant married his Romanian wife in 1984. They have one U.S.-born son, age 11.

In 1988, Applicant and his wife immigrated to Israel. Because of his wife's ancestry, they became Israeli citizens and were issued Israeli passports. In 1992, Applicant entered the United States under a student visa to pursue a master's degree in electrical engineering. That same year, he was offered a job with a U.S. company that later sponsored his work visa in the United States. His wife joined him in 1992, and they have been U.S. residents through present. In 1992, he was awarded a master's degree

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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 electrical engineering at a U.S. university. Applicant and his wife became naturalized U.S. citizens in 1999, and they were issued U.S. passports that same year.

Applicant was hired by his current employer, a large government contractor, in April 2004. He has possessed a security clearance at the secret level since 2005. He applied for an upgrade of his access level in 2010. There is no evidence that he has ever compromised or caused others to compromise classified information. Applicant is considered to be the preeminent physical designer engineer in his company. He is extremely dedicated and committed to his company and its customers. He is well respected by his supervisors and peers for his vast knowledge and technical skills. In sum, he is one of his company's most valued employees. He is considered to be honest, trustworthy, and a man of ethics and integrity. Applicant is currently pursuing a doctorate degree at a U.S. university funded by his employer. He anticipates receiving his doctorate degree in 2013.

Applicant has relatives and friends that are residents and citizens of Romania, including his mother, parents-in-law, aunts, and cousins. His sister is a Romanian and Swiss citizen, but she resides in Germany. Applicant has contact with his mother, sister, and in-laws (through his wife) on a weekly basis. He travels to Romania at least once a year to visit his relatives living there. When he is in Romania, he also has contact with extended family members and long-time friends. However, his contact with extended family members and friends is limited to occasional email and telephonic contact throughout the year, usually during birthdays and special occasions.

Applicant's grandparents built an apartment building, consisting of seven apartments, in the center of a large city in Romania. In the 1950s, the Soviet Union nationalized all Romanian private property, and his parent's estate was confiscated. In 1989, Romania became a democratic government. In 1992, Applicant's parents recovered their building and land from the Romanian government.

Applicant's father passed away in 2004. In 2009-2010, his mother's health declined and she could no longer manage the building. His mother (age 78) donated half of the property to Applicant and half to his sister. Romanian law only allows Romanian citizens to possess title to Romanian land. To protect his interest in the land, property, and his ability to inherit from his mother in the future, Applicant renewed his expired Romanian passport and solicited a Romanian personal identification number. With those documents, Applicant was able to preserve his right of ownership to the land and his ability to inherit. In 2011, Applicant notified his facility security officer (FSO) that he was renewing his Romanian passport.

Applicant testified that since he received his U.S. passport in 1999, he did not travel using either the Israeli or Romanian passports. He renewed several times both his Israeli and Romanian passport, but never used them to travel after he was issued a U.S. passport. In 1998, he and his wife travelled to Israel to attend a wedding using their Israeli passports. He stated he never used his Israeli passport to travel again. At the time of his February 2010 SCA, both the Israeli and Romanian passports were expired.

Applicant allegiance is solely to the United States. He is fully aware of the oath he took as a naturalized U.S. citizen. The rental income he receives from his Romanian property is used to supplement his mother's pension, and for property maintenance and improvements. In 2008-2009, he was offered \$900,000 for the property. (Tr. 55) Applicant does not own any other foreign property in Romania, but he anticipates inheriting additional property from his mother. Applicant's wife is in a similar situation. Her parents are old and not in good health. They own significant real estate property in Romania that she will inherit sometime in the future.

In his May 2012 answer to the SOR, Applicant reiterated his willingness to surrender any foreign citizenship and forfeit any property if the United States deems it necessary. On July 25, 2012, Applicant surrendered his valid Romanian passport and his expired Israeli passport to his company's facility security officer.

At his hearing, Applicant candidly disclosed that he requested casual work arrangements with his employer to finish his Ph.D. course, and to travel more frequently to Romania and stay there for extended periods of time. He explained that his mother's health continues to deteriorate and she was bedridden. She has no other close relatives to take care of her. Applicant and his sister plan to alternate taking care of their mother. Additionally, Applicant's mother-in-law was also ill and pending an operation. The same day of his hearing, Applicant's wife and son departed for Romania. Applicant was to join them as soon as possible.

Applicant testified that he does not anticipate disposing of his Romanian property in the near future. He would not be able to dispose of the property while his mother is alive and residing on the property. He stated that maybe after he retires from his job and he is no longer travelling to Romania he would consider selling it. (Tr. 56-58) Applicant's wife is in a similar situation. Her parents also own prime real estate in Romania that she anticipates inheriting. Her anticipated inheritance will include a larger and more expensive residential and commercial property.

Applicant and his wife have substantial financial interests in the United States. They own a home with an estimated value of \$1.1 million (owing a \$500,000 mortgage). Their income tax returns reflect a combined income of \$400,000. Additionally, they own retirement accounts and other investments in the United States.

Applicant noted that Romania ousted its communist government and established a democratic government in 1989. Romania is a republic with a market-oriented economy, and it remains largely free of terrorist incidents. Since 1989, Romania has actively pursued a policy of strengthening relations with the West. It was a helpful partner to the allied forces during the first Gulf War, and has been active in peace support operations in many nations. Romania maintains good diplomatic relations with Israel and has been supportive of the Middle East peace negotiations. The country became part of the North Atlantic Treaty Organization (NATO) in 2001, and a member of the European Union in 2005.

## 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 three 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, 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 and his wife are Romanian citizens by birth. They are also citizens of Israel and naturalized U.S. citizens. Applicant's 78-year-old mother and his parents-in-law are residents and citizens of Romania. His sister is a Romanian and Swiss citizen, and she is currently a resident of Germany. Applicant has weekly communication with his mother and sister. He and his wife (through his wife) have weekly contact with his parents-in-law. He also has contact with extended family members and friends who are citizens and residents of Romania. His communication with extended family members and friends occurs three to four times a year, usually during holidays and special family events. Whenever Applicant travels to Romania, he visits with his immediate and extended family members and friends.

Applicant's relationship with his mother and in-laws living in Romania 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 mother and in-laws living in Romania. See ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). He has affection for his mother and in-laws living in Romania. His communications with his extended family are infrequent, and accordingly, those relationships do not raise a security concern.

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.

Romania is a republic with a democratic form of government. It is a member of both NATO and the European Union. The country has a market-oriented economy, and it remains largely free of terrorist incidents. Since 1989, Romania has actively pursued a policy of strengthening relations with the West. It was a helpful partner to the allied forces during the first Gulf War, and has been active in peace support operations in many nations. Romania maintains good diplomatic relations with Israel and has been supportive of the Middle East peace negotiations. 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 Romania.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives from Romania, terrorists, or criminal groups seek or have sought classified or economic information from or through Applicant or his family living in Romania. Nevertheless, his relationships with his family living in Romania 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 Romania, raising the issue of potential foreign pressure or attempted exploitation. Additionally, Applicant has a substantial property interest in Romania, which could subject him to a heightened risk of foreign influence or exploitation. AG ¶¶ 7(a), 7(b), 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.

AG ¶¶ 8(a) to 8(c) have limited applicability. Applicant has frequent contact with and affection for his mother and his in-laws living in Romania. He is not able to fully meet his burden of showing there is "little likelihood that [his relationship with his relatives and friends who are Romanian citizens and living in Romania] could create a risk for foreign influence or exploitation."

Applicant also has substantial property interests in Romania. He renewed his Romanian passport and other personal identification documents to protect his property interests in Romania and to be able to inherit from his mother in the future. Additionally, he anticipates that his wife will be in a similar situation. Her parents also have substantial business and property interests in Romania that she will inherit.

Under AG ¶ 8(b), 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 Romania. Although there is no evidence that Romanian government agents, terrorists



or criminals have approached or threatened Applicant or his family living in Romania because of his work for the United States, he is nevertheless potentially vulnerable to threats and coercion made against her family living in Romania.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has established that "[he] can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant was born in Romania. In 1988, he immigrated to Israel, and he became an Israeli citizen. In 1992, he and his wife immigrated to the United States and they became naturalized U.S. citizens in 1999. They have been living in the United States since then. Their son is a U.S. citizen. Applicant works for a U.S. contractor and holds a security clearance. He and his wife own property in the United States valued at about \$1.1 million.

AG ¶ 8(d) does not apply because Applicant's contacts and relationships with his family in Romania were not on behalf of the U.S. Government. AG ¶ 8(f) does not apply. Applicant owns substantial property interest in Romania and he anticipates inheriting additional property interest in Romania. Applicant has not divested himself of any interest in property in Romania. He does not anticipate divesting himself of any interest in Romanian property in the near future.

In sum, Applicant's connections to his family living in Romania and his interest in Romanian property remain very significant to him. Even though he has strong connections to the United States, those connections are insufficient to fully mitigate the Guideline B security concerns.

### **Foreign Preference**

Under AG ¶ 9 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 ¶ 10(a) describes two conditions that could raise a security concern and may be disqualifying in Applicant's case:

- (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. . . . (5) using foreign citizenship to protect financial or business interests in another country; and
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant has a one-half ownership in an apartment building located in Romania and he received rental income from that property. Additionally, he anticipates inheriting additional property in Romania. To protect his property interest in the apartment and the

land where the building is located, Applicant requested a Romanian personal identification document and a Romanian passport. These facts establish AG ¶ 10(a) and further inquiry about the applicability of mitigating conditions is required.

AG ¶ 11 provides six conditions that could mitigate the foreign preference security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

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

(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶ 11(a) does not apply because Applicant exercised his Romanian citizenship when he applied for a Romanian identification card and passport to protect his interest in Romanian land and property. Applicant initially expressed a willingness to renounce his dual citizenship. However, at his hearing he testified that he will not be renouncing his Romanian citizenship or his interest in the Romanian property at any time in the near future. AG ¶ 11(b) does not apply.

AG ¶ 11(e) "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," applies in part, but does not fully mitigate the security concern. Applicant relinquished his passport to the contractor's security personnel. However, at his hearing he indicated that he was traveling to Romania the day after the hearing. He anticipates spending lengthy periods of time in Romania taking care of his ill mother in Romania. Applicant will likely use his Romanian passport in the future to protect his substantial property interests in Romania.

## 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 52 years old, and he is mature and responsible. He has continued to educate himself, and he is currently participating in Ph.D. studies. He immigrated to the United States in 1992. He and his wife became U.S. citizens in 1999, and they have lived in the United States since. Their son was born in the United States, and he is a U.S. citizen. Applicant works for a U.S. contractor, and has possessed a security clearance without incidents for many years. He owns property in the United States valued at about \$1.1 million. He has strong connections to the United States.

Applicant is a good son. His 78-year-old mother is in poor health and Applicant wants to take care of her. He renewed his Romanian passport and obtained a Romanian identification card to protect his property interests in Romania and to be able to inherit additional property in the future. He turned in his Romanian and Israeli passports to his facility security office. He offered to renounce his Romanian citizenship and divest himself from his interest in Romanian property; however, he will not be able to do that in the near future. The factors supporting a continuing foreign influence security concern and denial of Applicant's security clearance because of Applicant's connections to Romania are more significant than the factors weighing towards approval of his access to classified information.

## 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 APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	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