



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-09867  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Department Counsel  
For Applicant: *Pro Se*

August 8, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On October 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines B and C. 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 revised 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.

Applicant answered the SOR in writing on December 18, 2007, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on April 17, 2008. Applicant did not file a response to the FORM. The case was assigned to me on June 24, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is a 37 year old employee of a defense contractor.

Applicant was born and raised in Romania. In 1988, she moved to the United States with her parents and two brothers. Applicant, along with her father and brothers, became United States citizens in 1996. Apparently her mother did not. They all live in the United States.

Applicant married a Romanian citizen in Romania in 2007. She has filed the paperwork to sponsor her husband's admission into the United States, but to date no action has been taken by United States authorities. Her husband still resides in Romania.

In addition to her husband, applicant has a mother-in-law, father-in-law, two sisters-in-law, and a brother-in-law who are citizens and residents of Romania. Applicant maintains daily contact with her husband and weekly contact with other family members residing in Romania.

Applicant renewed her Romanian passport in 1998, after she became a United States citizen. She renewed it again in 2003. When it expires in October 2008, she will renew it. She was issued a United States passport in 1999.

Applicant traveled to Romania in 2004, 2006, and 2007. She used her Romanian passport instead of her United States passport on these trips. In her SOR response, applicant stated that the use of her Romanian passport "year after year is not an indication of foreign preference over the United States, it is a practical method of simplifying the planning for a vacation that does not require me to request [from] the Romanian authorities a visa to enter Romania . . . ."

Applicant has a Romanian bank account with her husband worth \$500.00. She opened the account while in Romania in 2007 and keeps it in case of an emergency while she is visiting that country. She has over \$350,000.00 in assets in the United States.

In her SOR response, applicant stated that she has been living in the United States for almost 20 years, and clearly has a preference for the United States over Romania and every other country.

The Government offered into evidence a 2007 United States Department of State Report on Romania's human rights practices (Exhibit 6). This report establishes the following facts:

Romania, a country with about 21.6 million citizens, is a constitutional democracy. Although the Romanian government addressed some human rights problems during the year, abuses continued to occur. There were reports of illegal wiretapping of citizens, and the public has a widespread perception of corruption and lack of fairness within the judiciary.

## **Policies**

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is 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.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 7.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” may be disqualifying. Under Paragraph 7.b., “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information” may be disqualifying. Lastly, under Paragraph 7.i., “conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country” may be disqualifying.

Applicant has daily contact with her husband, and weekly contact with other family members living in Romania. In addition, since moving to the United States in 1986, she made at least four trips to Romania. Applicant's presence in Romania during these trips made her and her family members potentially vulnerable to exploitation, pressure, or coercion by the Romanian government. These facts raise concerns under all three disqualifying conditions.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph 8.a., it is potentially mitigating if an applicant can demonstrate that “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.” Under Paragraph 8.b., it is potentially mitigating if an applicant can demonstrate “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.” Lastly, under Paragraph 8.c., it is potentially mitigating if an applicant can demonstrate that the “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.”

None of the foregoing mitigating conditions is applicable. Applicant's close and loving relationship to her husband, standing alone, creates a risk for foreign influence or exploitation. Applicant provided insufficient credible evidence that it is unlikely she would be placed in a position of having to choose between the interests of a foreign government and the interests of the United States, or that she is not vulnerable to a conflict of interest.

## **Guideline C, Foreign Preference**

The security concern relating to the Foreign Preference guideline is set forth in Paragraph 9 of the AG, and is as follows:

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.

Paragraph 10 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 10 a.1., exercising any right or privilege of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member, such as possession of a current foreign passport, may be disqualifying. Applicant possessed and used a Romanian passport after becoming a United States citizen. Accordingly, this disqualifying condition applies.

Paragraph 11 describes potentially mitigating conditions. Under Paragraph 11.a., it may be mitigating if the “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” This mitigating condition is applicable.

### **“Whole Person” Analysis**

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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) 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.” Under AG Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature woman who has voluntarily maintained her dual citizenship, renewed and used her foreign passport after becoming a United States citizen, and recently married a citizen and resident of Romania. These actions create a heightened risk of pressure, coercion, exploitation and duress. Although I have considered the fact that Romania and the United States have friendly relations, this fact is not determinative. “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).

I have carefully reviewed the administrative record, applicant's submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guidelines B and C, and I have evaluated applicant's conduct in light of the whole person concept identified at Paragraph E2.2. of Enclosure 2 of the Directive. After doing so, I conclude that applicant failed to rebut the Government's case under Guidelines B and C.

There is nothing in the record that suggests applicant is anything but a loyal American citizen. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied concern as to applicant's allegiance, loyalty, or patriotism.

### **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:

Guideline B: AGAINST APPLICANT

Guideline 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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JOSEPH TESTAN  
Administrative Judge