



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



In the matter of: )  
)  
) ISCR Case No. 17-04254  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*  
08/26/2019

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 22, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on February 1, 2018, and requested a hearing before an administrative judge. The case was assigned to me on January 16, 2019. The hearing was convened as scheduled on May 15, 2019.

**Evidence**

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Ukraine. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the Russian forces' occupation of the Crimean Peninsula, the ongoing armed conflict between Russia and Ukraine, and the ongoing arbitrary detentions and human rights abuses from both sides related to the armed conflict. The Ukrainian government has failed to take adequate steps to prosecute or punish officials engaged in human rights violations and abuses.

### **Findings of Fact**

Applicant is a 37-year-old employee of a defense contractor. She has worked for her current employer since 2015. She graduated from a U.S. high school in 1999; completed an associate's degree in 2002; received a bachelor's degree in 2004; and she completed a master's degree in 2006 and a master's in business administration (MBA) in 2010. She has been married and divorced twice, and has a six-year-old daughter born in the United States.

Applicant was born in Ukraine to Ukrainian parents. She entered the United States in 1995 with her parents at age 14. Her father worked for the Ukrainian government in the United States where he held a sensitive leadership position until he retired in 1999. Upon the completion of her father's tour in the United States, Applicant's parents returned to Ukraine. She stayed in the United States living with high school teachers until she became 18. After that, she supported herself by working two full-time jobs while attending school at night. She became a naturalized U.S. citizen in 2007, and renounced her Ukrainian citizenship.

Applicant stayed in the United States because she believed in the American ideas of freedom, liberty, and the many opportunities offered in the United States that enticed her. She believed that there would be a better chance of having a future here in the United States than in Ukraine. She loves the American dream and all the things that are here that are just so different to those in Ukraine. She testified:

I love this country because this is the only country, as far as I know, in the world that you could be without any support and by working you could actually achieve something. You could have an independent life and that's just not possible, not possible in Ukraine . . . I really hope like the whole world will become one day, you know, part of the United States because it's just the freedom of minds, the freedom of speech, the, you know, just being nobody and, achieving, like working and, you know, have a life like that. (Tr. 39-41)

Applicant testified that when her parents left the United States, they did not have any money to provide her with any financial support. She believes they thought she would

have the Ukrainian government return her home in a week. However, Applicant stayed and since then, she has not had a lot of contact with her parents. Initially, she just had telephonic contact, and now she uses computer programs for face-to-face communication so she could actually see and talk with her mother.

Applicant's father and mother are both in their 70s. Her parents and her half-brother are resident-citizens of Ukraine. According to Applicant, her father has not worked after he retired in 1999. He receives a pension from the Ukrainian government, but otherwise he has no contact with the Ukrainian government or its military services. Applicant has contact with her father once a month. Applicant's mother was a professor at a Ukrainian university. She currently works as an English tutor. Her mother is having medical problems. She was treated for cancer during her stay in the United States (1995-1998) and recently had a delicate operation in her country. Applicant communicates with her mother about four times a week via electronic means. Her mother visited Applicant in the United States four times: when she got married, when her daughter was born, when she divorced, and on another occasion. According to Applicant, her parents are now aware she works in a national security position.

Applicant's half-brother is married with children. He is a systems engineer for a private company in Ukraine. They have electronic contact once a month. Between 2002 and 2012, Applicant provided around \$5,000 to \$6,000 in financial assistance to her parents and brother. After the birth of her daughter and due to other financial obligations, she has not provided any financial support to her family in Ukraine. Applicant has no property or financial interests in Ukraine. She believes that because she renounced her citizenship, she has no right to inherit from her parents and the inheritance will go to her brother.

Applicant travelled to Ukraine to visit her family in 2003, 2005, and 2007 using her Ukrainian passport. She received her U.S. passport in 2007-2008 and used it to travel to Ukraine in 2009, 2010, and 2014. When she travels, she stays with her family in Ukraine for about 20 days. She does not travel frequently because it takes too long to get to her parents' home and she does not want it to interfere with her job.

In 1999, Applicant received an internship from a U.S. agency, and later she was hired as a consultant and granted a clearance. She worked for this agency until 2001. She also was granted a clearance by two other U.S. Government agencies in 2007 and in 2010.

Applicant presented four references, two testified and two submitted statements. In general, Applicant is considered to be a good American who is trustworthy, a hard-working single mother who is goal oriented, kind to her daughter, and a caring friend. (AE 1 and 2; Tr. 21-26) A vice-president (VP) at the corporation where Applicant works provided favorable testimony. He has 23 years of military service experience highlighted by his work as a senior service executive at a U.S. command, and as chief of a contracting

office for a military service. He met Applicant in 2014 when he interviewed her for her current position and they have become friends. He closely supervised Applicant from early 2015 until November 2018, when he was promoted to his current position.

The VP believes Applicant is a trustworthy person. She is open, upfront, and honest in her dealings with other people. In his opinion, Applicant is very loyal to the country that she has adopted and calls her home now. He has no reservations about her maintaining her clearances. (Tr. 30-37)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship

transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, 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; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

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 operations against the United States, or the foreign country is associated with a risk of terrorism.

There is a significant threat of terror and ongoing human rights problems in Ukraine compounded by Russia's invasion and military occupation of sections of Ukraine, and their ongoing armed conflict. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion.

Applicant's parents and her half-brother are citizens and residents of Ukraine. There is potential for state or terrorist violence against U.S. interests and citizens in Ukraine, and the country has human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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 United States; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

I considered the totality of Applicant's family ties to the Ukraine as well as each individual family tie. 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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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.

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 operations against the United States, or the foreign country is associated with a risk of terrorism. I considered that Applicant's father held a sensitive position in the Ukrainian government. However, that was close to 20 years ago. He retired when he left the United States, and did not maintain any connections with the Ukrainian government or military forces.

Applicant is a loyal U.S. citizen. At age 17, she left her parents and stayed in the United States when they returned to Ukraine. She followed the American dream of freedom and achieving success through hard work and dedication. She has accomplished her dream. She is a well-educated woman who is successful in her job and as an American. She has a child born in the United States and has immersed herself in the culture of the United States. She accomplished her dream on her own, without any support from her parents or family in Ukraine.

Applicant's ties to Ukraine are outweighed by her deep and long-standing relationships and loyalties in the United States. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of Ukraine. Moreover, even if that was the case, Applicant's actions since 1999 demonstrate that there would be no conflict of interest because she can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis.

At age 17, Applicant decided to stay in the United States when her parents returned to Ukraine. She educated herself and has become a productive U.S. citizen. She is now 37, has a six-year-old daughter, and has established deep and long-standing relationships and loyalties in the United States. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

### **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: For Applicant

Subparagraphs 1.a-1.c: For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

JUAN J. RIVERA  
Administrative Judge