



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



In the matter of:)
)
) ISCR Case No. 18-01717
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Leon J. Schacter, Esq.

04/26/2019

Decision

Curry, Marc, Administrative Judge:

Applicant mitigated the foreign influence security concerns generated by her relationships with colleagues who are citizens of Spain, Japan, and France. Clearance is granted.

Statement of the Case

On July 6, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017. The transcript was received on February 26, 2019.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue Applicant's security

clearance. It recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On July 25, 2018, Applicant responded to the SOR, admitting all of the allegations, except 1.d and 1.e, and requested a hearing. The case was assigned to me on November 1, 2018. On January 23, 2019, DOHA issued a notice of hearing, scheduling the case for February 14, 2019.

At the hearing, Department Counsel submitted five documents for admission that I marked as Government Exhibits (GEs) 1 through 5. Counsel for Applicant objected to GE 2, excerpts from a report of investigation, and had no objection to the admissibility of the other exhibits. I sustained the objection to GE 2 and admitted the remaining exhibits into the record. Applicant's Answer included seven attachments that I marked and incorporated into the record as Applicant's Exhibit (AE) A through AE G.¹

I took administrative notice, at Department Counsel's request, of the facts encapsulated within four source documents, identified as Hearing Exhibits (HE) I through HE IV. I also took administrative notice, at Applicant's counsel's request, of the facts contained within three documents, identified as HE V through HE VII. The transcript was received on February 26, 2019.

Findings of Fact

Applicant is a 42-year-old married woman with two children, ages three and five. She was born and raised in Spain, attending college there in 1994 and graduating in 1999, after spending her last year completing an internship in the United Kingdom. (Tr. 52) After graduating from college, she returned to Spain to attend graduate school. In 2002, she earned a master's degree in foreign service.

After obtaining her master's degree in 2002, Applicant moved to the United States to pursue further post-graduate education. In 2004, she earned a master's degree in international relations. In 2005, Applicant earned a Ph.D from a university in the United Kingdom. While working on her Ph.D, she was recruited by a member of the Spanish foreign ministry to work in Bosnia. She lived abroad between 2005 and 2007, performing field work related to her area of expertise.

Applicant returned to the United States in 2007, married her husband, a U.S. citizen, in 2009, and became a naturalized citizen in 2016. (GE 1 at 44; AE E at 2) Since returning to the United States in 2007, she has worked at a number of post-doctoral fellowships. She is a subject-matter expert on peacekeeping, conflict resolution, and civilian protection. (Tr. 59) Recently, she obtained a realtor's license. She is working part-time as a realtor while her security clearance application is pending. (Tr. 28)

¹ Department Counsel did not object to their admissibility.

Applicant is highly respected by her colleagues. According to her supervisor with whom she worked at her most recent fellowship, she is a “highly intelligent, diligent person with a high work ethic and great personal and professional integrity.” (Tr. 72-73)

In 2010, Applicant worked as a consultant for a Spanish citizen and Spanish government employee. (Tr. 40) She worked in this capacity for six months. After she stopped providing consulting services for this individual, she remained in touch, as he sometimes provided professional advice and character references. He currently works for a major military alliance. (Tr. 41) She last saw him in 2014. Their last communication was a Christmas greeting exchanged in 2016. Applicant was not an employee of the Spanish government when she worked with this gentleman. She worked as a consultant for the U.S. government during the same period. (Answer at 2)

In 2010, when Applicant worked as a consultant for the Spanish citizen, discussed above, she was acquainted with a person who was working as an advisor to the Spanish foreign ministry. (Answer at 2) After she left her consulting position, they remained in touch, texting occasionally. She last saw him in 2017. She has had no contact with him since December 2017. (Tr. 42)

Applicant’s paternal aunt is a citizen and resident of Spain, and she was an employee of a Spanish ministry. (Answer at 2) She is now retired. Applicant and her aunt were never close relatives (Tr. 43) Applicant last saw her either during Christmas 2016 or Christmas 2017. (Answer at 2)

While Applicant was providing consultant work in Bosnia and Herzegovina, she met a woman who was a citizen and resident of Bosnia and Herzegovina. This woman worked as an interpreter. Applicant has not seen her since she met her for lunch when her friend visited the United States in July 2016. (Answer at 2; Tr. 44)

While Applicant was performing consulting work at the Spanish embassy in 2010, she met a Spanish citizen who worked for a Spanish ministry. (Answer at 3) Applicant’s last contact with this individual was an e-mail exchange in 2013. (Answer at 6)

Applicant has a friend who is a citizen of Japan and a U.S. resident. When they met, her friend was part of a community of stay-at-home mothers who periodically get together for play dates with their children, and to share insight into the demands of juggling careers with raising children. (Tr. 63) Before taking extended maternity leave, Applicant’s friend worked at the Japanese embassy. Applicant’s friend no longer works there. When she re-enters the workforce, she plans on working at her husband’s dentistry practice.

Applicant has an acquaintance who is a citizen and resident of France who works for a French think tank. They met at a workshop in Europe in 2015. (Answer at 4) They stayed in touch by e-mail for approximately a year, typically discussing mutual issues involving balancing careers and raising children. Applicant has had no contact with her since January 2016. (Tr. 47; Answer at 7)

All of Applicant's assets are in United States. (Tr. 26) She has a realtor's license and her children attend public school. (Tr. 28)

Administrative Notice

Spain

Spain is a democracy with a long history of cultural, economic, and political ties with the United States. In addition to being members of the North Atlantic Treaty Organization (NATO), defense and security issues are regulated by the Mutual Defense Assistance Agreement, and the Agreement on Defense Cooperation, signed in 2015. (HE VI at 1-2) Spain is a staunch ally in the fight against terrorism. Many of its security forces are deployed in key international missions around the globe. U.S.-Spanish bilateral engagement includes more than 70 annual exercises, thousands of ships and aircraft transiting through Spain, and a robust foreign military sales program. (HE VI at 2)

Bosnia and Herzegovina

The United States established diplomatic relations from Bosnia and Herzegovina in 1992 following its independence from Yugoslavia. (HE II at 1) A period of conflict among rival ethnic groups followed its independence, lasting three years, until 1995. (*Id.* at 1) U.S. involvement was crucial in ending the conflict. Since then, U.S. involvement has centered on strengthening democratic institutions and civil society. Bosnia and Herzegovina is a participant in the North Atlantic Treaty Organization's Partnership for Peace program, and is pursuing membership in the European Union. (HE II at 2)

Japan

Japan is one of the most successful democracies in the world. Its alliance with the United States is the cornerstone of U.S. security interests in Asia. (HE III at 1) Japanese political and financial support has significantly assisted U.S. efforts on a multitude of global issues, including combating terrorism and working to stop the spread of emerging pandemics. (HE III at 1-2)

France

Relations with France are active and friendly. (HE IV at 1) France and the United States share common values and have parallel policies on most political, economic, and security issues. The United States and France work closely on many issues, most importantly in combating terrorism, and efforts to stem the proliferation of weapons of mass destruction. (HE IV at 1)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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.” (AG ¶ 6) The following disqualifying conditions are potentially applicable under AG ¶ 7:

- (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.

Spain, France, and Japan are allies of the United States, with shared values and largely similar geopolitical objectives. The U.S. relationship with Bosnia and Herzegovina, though nascent, is friendly. In a world where there are countries openly hostile to the United States, countries that brazenly engage in espionage against the United States, and countries that export terrorism, it would stretch credulity to conclude that there is a heightened risk that either Spain, Japan, France, or Bosnia Herzegovina would strong-arm classified or sensitive information from Applicant through inducement, manipulation, pressure or coercion of her foreign colleagues, friends, or relatives. Therefore, I conclude that none of the disqualifying conditions apply to Applicant's relationship with her Spanish aunt who is retired, her Japanese friend, a homemaker living in the United States, and her French acquaintance, who lives and works for a French think tank. Assuming for the sake of argument that either AG ¶¶ 7(a) or 7(b) apply, Applicant's relationship with these individuals is mitigated by AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation." I resolve SOR subparagraphs 1.c, 1.f, and 1.g in Applicant's favor.

The heightened risk analysis is not limited to the relationship of the country and the United States. The nature of the foreign contacts and the nature of the foreign citizens' employment must also be considered. ISCR Case No. 17-03026 at 5 (App Bd. Jan. 16, 2019). Under these circumstances, Applicant's relationships with friends who hold or have held significant positions in the Spanish government, as alleged in subparagraphs 1.a, 1.b, 1.d, and 1.e, trigger the application of AG ¶ 7(a) and AG ¶ 7(b).

Applicant has had no contact with the acquaintances alleged in SOR subparagraphs 1.a and 1.d in three years. She has had no contact with the foreign friend alleged in subparagraph 1.b in two years, and she has had no face-to-face contact with the acquaintance alleged in subparagraph 1.e in nearly ten years, with their last e-mail exchange occurring three years ago. Applicant has been a U.S. citizen for nearly ten years. Her husband and both of her children were born here, all of her assets are in the United States. Moreover, she is thoroughly integrated into U.S. culture, participating in a stay-at-home mothers' group, and working part-time as a realtor. AG ¶ 8(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 nominal, 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," and AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation," apply. Applicant has mitigated the security concerns related to the foreign contacts alleged in SOR subparagraphs 1.a, 1.b, 1.d, and 1.e.

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 the 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.

Given the nature of Applicant's profession, it is axiomatic that she is going to work with individuals who are high ranking foreign government officials. I am confident that she would resolve any potential conflict of interest in the interest of the United States, for the reasons set forth in the discussion of the disqualifying and mitigating conditions.

Formal Finding

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.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc Curry
Administrative Judge