



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



In the matter of: )  
)  
) ISCR Case No. 18-01891  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

12/20/2019

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the personal conduct security concern. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 15, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing a single security concern under Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on September 27, 2018, and requested a hearing before an administrative judge. The case was assigned to an administrative judge on January 11, 2019, and reassigned to me on May 10, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 28, 2019, scheduling the hearing for June 17, 2019. I convened the hearing as scheduled.

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and did not submit any documentary evidence. At Applicant's request and with no objection from the Government, I left the record open until July 1, 2019, for the parties to submit additional documentation. Neither party did so. DOHA received the hearing transcript (Tr.) on July 1, 2019. (Tr. at 16-21, 54-55)

### **Findings of Fact**

Applicant admitted the sole SOR allegation. She is a 23-year-old, native-born U.S. citizen. As of the date of the hearing, she was single with no children. She obtained a high-school diploma in 2014. She has since attended college but had not yet earned a degree. She has held a security clearance since October 2015, when she enlisted in the National Guard. She has worked as a security officer for her current employer, a DOD contractor, since July 2018. (Tr. at 5-7, 8-9, 22-26, 43-44, 52-54; GE 1-2)

The SOR alleges that Applicant's brother is a citizen of Senegal currently residing in Applicant's U.S. residence as an undocumented alien. Applicant's parents immigrated to the United States from Senegal in 1991, before she was born. She listed on her October 2015 security clearance application (SCA) that her 72-year-old father, 61-year-old mother, 37-year-old brother, 35-year-old brother, and 33-year-old sister were Senegalese-born citizens residing in the United States as undocumented aliens. She testified that she has extended family members residing in the United States. She was unaware of the U.S. citizenship status of her aunts and uncles, but she knew that their children were native-born U.S. citizens. She also has extended family members residing in Senegal, but she does not maintain contact with them. (Tr. at 31-38, 41-42, 46, 48; GE 1-2)

At the hearing, Applicant testified that she believed her parents began the lengthy process of applying for their green cards in approximately 2013, and they recently received them as her mother has twice traveled to Senegal. She testified that they intend on becoming U.S. citizens. She testified that her 37-year-old brother obtained U.S. citizenship through his then-spouse or children, and she informed the DOD background investigator of such in 2017. She also testified that her sister married a U.S. citizen, through whom her sister was being sponsored for U.S. citizenship. (Tr. at 31-38, 49-50; GE 1-2)

Applicant testified that her 35-year-old brother, who is the subject of the SOR allegation, told her that he was a Deferred Action for Childhood Arrivals (DACA) recipient, but his DACA status was revoked as a result of his criminal involvement. She was unaware of his citizenship status as of the date of the hearing. She testified that as of the date of the hearing, he had been incarcerated since approximately April 2019 for an assault charge that was pending trial. He was twice previously arrested: the first for a marijuana possession charge and the second for a marijuana possession charge and a firearm violation. She testified that there was an immigration hold on him and she believed he would ultimately be deported. (Tr. at 35-36, 38-40, 42-43, 48-52)

Applicant listed on her SCA that she had been living with her parents since 2007. She testified that she lived with them until February 2017, when she moved out to live with a previous partner or on her own. She testified that other than when she was in high school, both she and her 35-year-old brother lived with their parents during only one other occasion--an eight-month period from approximately 2016 until January 2017 when she could not afford to live on her own and they had to sponsor him as a condition of his probation for one of his previous arrests. She testified that "he was just staying on the couch until he could figure out somewhere else to go." He then moved out before she did and she has not since resided with him. She testified that she saw him daily when they both lived with their parents; she contacted him once monthly, primarily by telephone, after they moved out of their parents' home; and she eliminated contact with him after his 2019 incarceration because she did not want his criminal involvement to jeopardize her career. (Tr. at 4-5, 15-16, 26-31, 35-36, 38-40, 42-48; GE 1)

Applicant testified that her parents and sister are aware of her employment as a DOD contractor, and she was unsure whether her brothers were also aware. She testified that she has not sponsored anyone for U.S. citizenship and had no future intentions of doing so. She testified that she did not have any unfavorable issues at work, and she received an increase in rank in the U.S. military from an E-2 to an E-3 as well as U.S. Army Achievement Medals. (Tr. at 40-41, 47, 50, 52-53)

### **Policies**

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(a), 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; and

(g) association with persons involved in criminal activity.

As the youngest of three children, Applicant lived with her parents until February 2017. For eight months, from approximately 2016 to January 2017, her 35-year-old brother, whom she understood was an undocumented alien and who had been twice arrested for criminal involvement, also resided in the family home, as their parents were required to sponsor him as a condition of his probation. During that eight-month period, she saw this brother daily. She then kept in contact with him once monthly after he moved out of the family home in January 2017. He was arrested a third time for an

assault charge and was incarcerated as of the date of the hearing. I find that AG ¶¶ 16(e)(1) and 16(g) are established.

Conditions that could mitigate the personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant disclosed this brother and her understanding of his citizenship status as an undocumented alien on her SCA and during her 2017 interview with a DOD background investigator. She credibly testified that she believed this brother was a DACA recipient, his DACA status was revoked due to his criminal involvement, she was unaware of his citizenship status as of the date of the hearing, and she believed he would be ultimately deported after the completion of his trial for his assault charge. She also credibly testified that she eliminated contact with him after his April 2019 incarceration because she did not want his criminal involvement to jeopardize her career. I find that AG ¶¶ 17(e) and (g) are established.

### **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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Overall, the record evidence leaves me

without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct 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 E:	For Applicant
Subparagraph 1.a:	For Applicant

### **Conclusion**

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

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Candace Le'i Garcia  
Administrative Judge