



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



In the matter of:)
)
) ISCR Case No. 18-02337
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

September 13, 2019

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On October 15, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on November 5, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 13, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 10, 2019, scheduling the hearing for June 18, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 and 2, which were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on his own behalf. The record was left open until July 12, 2019, for receipt of additional documentation. Applicant offered four sets of documents, which I

marked Applicant's Exhibits (AppXs) A through D and admitted without objection. DOHA received the transcript of the hearing (TR) on July 1, 1019.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Republic of Korea, and to the Ukraine. Department Counsel provided a ten-page summary of the facts, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to all the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 33-year-old employee of a defense contractor. (TR at page 13 line 12 to page 14 line 20.) He has been employed with the defense contractor since 2016. (*Id.*, and GX 1 at page 13.) Applicant is married to a Ukrainian citizen,

Guideline B - Foreign Influence

1.a. As noted above, Applicant is married to a Ukrainian national, who resides with him in South Korea. (TR at page 18 lines 9~22.) She is in the process of becoming a U.S. citizen. (TR at page 20 line 24 to page 21 line 6.) Applicant's wife is not employed in South Korea. (*Id.*)

1.b. Applicant's mother-in-law is a citizen and resident of Ukraine. (TR at page 19 lines 1~6.) He has little contact with her, as he does not speak Ukrainian. (*Id.*)

1.c. Applicant's sister-in-law is a citizen and resident of Ukraine. (TR at page 19 lines 8~13.) He does not know what she does "for a living." (*Id.*) Applicant only speaks to her through his wife's "Skypes" about twice a year. (GX 2 at page 10.)

1.d. Applicant's mother is a citizen and resident of South Korea. (TR at page 17 lines 7~13.) "She has [an] American Green Card." (*Id.*) Applicant's mother "runs the Katusa [Korean Augmentation of the U.S. Army] at the K16 [U.S. Army] Air Base." (TR at page 21 lines 8~15.)

1.e. Applicant's father is a U.S. citizen, and resides in South Korea. (TR at page 17 line 14 to page 18 line 8.) He is retired from the U.S. Army, and works for the U.S. Army. (*Id.*)

1.f. Applicant's sister is a U.S. citizen, and resides with their parents in South Korea. (GX 1 at page 23.)

Guideline C - Foreign Preference

2.a. Applicant possesses a Republic of Korea Alien Registration Card. (TR at page 14 line 21 to page 16 line 5, and AppX A.) It is “difficult as an American to gain access to certain services,” such as the “internet,” and “paying utilities,” without said card. (*Id.*, and AppX C.)

Notice

I take administrative notice of certain facts regarding South Korea. Its government espionage and collection activities have resulted in U.S. criminal prosecutions. Industrial espionage also remains a high-profile concern relating to South Korean companies.

I take administrative notice of certain facts regarding Ukraine. It is a republic with a semi-presidential political system. In 2014, Russian forces entered and occupied Ukraine’s Crimean Peninsula. There are significant human rights issues in parts of Ukraine under Russian occupation.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (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 relating to the guideline 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. Three 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;

(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; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's spouse is a Ukrainian national, as are his Ukrainian in-laws. His mother is a citizen and resident of South Korea. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 United States;

(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; and

(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.

Other than his wife, Applicant has little contact with his Ukrainian relatives. His Korean mother works in support of the U.S. Army in Korea. His father is a U.S. Army retiree working for the U.S. Army in Korea as a civilian employee. His American sister lives with their parents in Korea. Foreign Influence is found for Applicant.

Guideline C - Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not

disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

None of these are applicable. Applicant only has an Alien Registration Card so that he can live with some basic necessities in Korea. It shows no Foreign Preference; and as such, this guideline is found for Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant has a distinguished history of working in the defense industry, as evidenced by five letters of support. (AppX B.) He performs well at his job. Applicant is a native-born American, and can be expected to resolve any conflict of interest in favor of the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence and Foreign Preference security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a.~1.f.:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge