



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



In the matter of:)
)
) ISCR Case No. 18-02390
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2019

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on July 7, 2017. On February 15, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken 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's) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on June 7, 2019. Applicant received the FORM on June 26, 2019. The Government's evidence, included in the file, and identified as Items 1 through

6, was admitted without objection. Applicant responded to the FORM with additional information, which was marked as AX A-M, and admitted into the record without objection. I was assigned the case on August 13, 2019.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Cuba. The request and the attached source documents were not admitted into evidence but were included in the record. All of the documents referenced in the Request for Administrative Notice and the facts asserted therein, are from open sources and are dated. Cuba is an authoritarian state. Cuba has a one-party system in which the constitution recognizes the Communist Party as the only legal party and the highest political entity of the state.

U.S.-Cuba relations deteriorated in 2017, after the U.S. Department of State confirmed that 26 U.S. diplomats suffered a series of unexplained injuries, including hearing loss and cognitive issues, with most occurring between November 2016 and August 2017. The Cuban government denied involvement or knowledge of the attacks, in response to which the U.S. Government withdrew 60% of its embassy staff, suspended the issue of visas to Cubans, and required the Cuban Embassy in the United States to reduce its staff by two-thirds.

In January 2019, the Director of National Intelligence (DNI) assessed that Cuba poses a persistent foreign intelligence threat to the United States, and that its intelligence services will continue to target the United States, which it sees as a primary threat. The Castro regime was known to target the United States for intensive espionage activities. On April 24, 2019, the Department of State updated the Cuba Restricted List with five additional sub-entities owned by the Cuban military.

Cuba's military, security, and intelligence services suppress the human rights of the Cuban people. The Cuban government closely monitors activities, including contacts with Cuban citizens who are suspected of engaging in activities that undermine state security. The government of Cuba maintains tight control of information through ownership of the communication networks and restricted internet access, meaning that there is little privacy for organizations and individuals.

Findings of Fact

The SOR alleged under Guideline B that (1.a) that Applicant's father is a citizen and resident of Cuba; and (1.b) that his sister is a citizen and resident of Cuba. Applicant admitted the allegations, and provided detailed explanations about his relationship to them. (Items 1, 3)

Applicant is a 31-year-old engineer, who was born in Cuba to Cuban parents. He lived in Cuba prior to the age of eight. (Item 4) In 1996, he entered the United States. (Item 3) His step-father and his mother won the Visa Lottery and after investigation were allowed to come to the United States. Applicant graduated from an American high school in July 2006. Applicant obtained an associate's degree in 2012 and another associate's degree in 2013. He is currently attending a university to complete his undergraduate degree. (AX A, Item 4) Applicant became a naturalized U.S. citizen in 2007. (AX E)

Applicant served in the United States Army Reserve from 2005 until 2009. He received a security clearance during his reserve time. (AX A) From 2009 to the present, Applicant has been a United States Air Force Reservist. He has received numerous awards and decorations. (AX C) In his current employment since July 2017, he manages three classified networks and helps with agreements with Central America as a Level II technician. (AX B) He was elected an Employee of the Year and has had good performance evaluations. (AX B)

Applicant's biological father is a citizen and resident of Cuba. (SOR 1.a) However, Applicant does not know his address and states that his "relationship with his father is estranged and mostly non-existent." Applicant decided to terminate any relationship with his father ten years ago. He elaborated in his answer to the SOR that it was not an easy decision, but he needed to cut "ties" due to his father abusing his mother. Applicant had no communication with his biological father from 2006 until he received a birthday email from him in August 2016. Applicant responded to the email and gave his father an update on his life. Applicant wrote that he worked for the Department of Defense. Applicant stated that he gave his father no details. He also did not give his father his address and telephone number. Applicant has not corresponded with him since that time. (Answer Item 3) Applicant sent his father three photos of himself.

Applicant's half-sister, who is a citizen and resident of Cuba, also emailed him in August 2016 to wish him a happy birthday. (SOR 1.b) She stated that she was unhappy that Applicant had never visited her in Cuba and was not happy that Applicant had not corresponded with her all these years. Applicant did not respond.

Applicant has not travelled to Cuba in approximately 15 years and does not provide any financial support to his biological father or half-sister. He wants no further contact with his father or half-sister. (Item 3) He visited Cuba when he was a junior in high school as a result of a parental arrangement. He stated that he never enjoyed a close relationship to his biological father. Applicant considers his stepfather his Dad.

Applicant submitted eight letters as character references. His employer and supervisors note that Applicant is an outstanding individual who is dedicated to each project. There have never been any violations or disregard for his duties protecting sensitive information. Another supervisor states that Applicant has shown leadership, maturity and team work in multiple areas. Some references have known Applicant for over nine years. His co-workers admire and respect him. His future-in-laws praise him

for his judgment and dedication to his family in the United States. They are both aware of the issues alleged in the SOR. (AX D)

Applicant is now engaged to be married to an American citizen. They live together in the United States. Applicant's mother and stepfather (who raised Applicant) live in the United States, as well as Applicant's sister. Applicant has extended family who live in the United States.

Applicant earns a good income, has a retirement account, several savings accounts and a net monthly remainder of almost \$3,000. He has no financial interests in Cuba. (AX G-K) He intends to buy a home when he marries. (AX F)

Applicant responded to the FORM and provided additional information. Applicant expressed that while he was born in Cuba, the United States is his home and he would never divide his allegiance to the United States. (Item 3) He emphasized that the United States has provided him with the opportunity to develop a career in something that he loves and has allowed him to serve in the U.S. Army and U.S. Air Force as a reservist. He has worked for over ten years with the Department of Defense. (AX A, Item 4)

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(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 that is 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, such considerations as whether the foreign country is known to target United States 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;

(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

(c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country.

Applicant's biological father and half-sister are citizens and residents of Cuba. Applicant's foreign contacts may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could potentially 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;

(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 U.S., 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.

I considered the totality of Applicant's foreign contacts and interests. 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.¹

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,

¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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.

Applicant was born in Cuba. He moved to the United States when he was eight years old, and is a naturalized U.S. citizen. He was educated in the United States. His mother, stepfather, sister and extended family are in the United States. Applicant serves in the Reserves. He has a career that he loves and is engaged to be married to an American citizen. Applicant has never had a close relationship with his biological father in Cuba. His biological father sent him an email in 2016 wishing him a happy birthday. Applicant, after ten years of silence decided to respond and sent his father a few photos. Applicant did not give his address or phone number, but he stated that he works for the Department of Defense. Applicant also received at the same time an email from his half-sister. He did not respond. Three years have passed since those emails and there has been no further communication.

Applicant decided over a decade ago not to have any communication with his biological father. He does not want to see him or visit him in Cuba. He does not really know his half-sister because Applicant came to the United States at the age of eight years old. His entire family is in the United States and he considers his stepfather his Dad. Applicant would never risk his personal and professional life in the United States. He is aware of Cuba and its authoritarian regime. Applicant's entire financial interests are in the United States. All of the above mitigating conditions apply.

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 B and in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Applicant has provided significant information to meet his burden of proof.

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 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–b:	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.

Noreen A. Lynch
Administrative Judge