



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 19-00456
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

March 6, 2020

Decision

ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence or foreign preference raised by his connections to the Philippines. He did not intentionally falsify a government questionnaire as alleged. His request for national security eligibility and a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 15, 2016. (Government Exhibit 1.) On June 26, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines B (Foreign Influence), C (Foreign Preference), and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense 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 within the Department of Defense on June 8, 2017.

Applicant answered the SOR on August 2, 2019, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on September 24, 2019. The case was assigned to me on September 25, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 18, 2019, scheduling the hearing for November 7, 2019. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 3, which were admitted without objection. The Government also submitted Government Exhibit 4 for Administrative Notice. Applicant testified on his own behalf. He requested the record remain open for the submission of additional evidence. He submitted Applicant Exhibits A through G in a timely manner, which were all admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 19, 2019.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Republic of the Philippines (the Philippines). Department Counsel provided a five-page summary of the facts, supported by six Government documents pertaining to the Philippines, identified as Government Exhibit 4. 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. (Tr. 12-13.)

Findings of Fact

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

Applicant is 48 years old and married, with one child. He is applying for national security eligibility and a security clearance in connection with his employment with a defense contractor as a hazardous material technician.

Paragraph 1 – Guideline B (Foreign Influence) and Paragraph 2 – Guideline C (Foreign Preference)

The Government alleged in Paragraph 1 of the SOR that Applicant is ineligible for clearance because he has foreign contacts or interests that may result in divided allegiance. The Government further alleged in Paragraph 2 of the SOR that Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

Applicant was born in the Philippines in 1971. He immigrated to the United States, along with his family, in 1988. Applicant joined the US Navy in 1989. He was naturalized as an American citizen in 1993. Applicant retired from the Navy as a Master at Arms First Class (E-6) in 2009. (Government Exhibit 1 at Sections 9 and 15; Tr. 14-15.)

Applicant met his wife while stationed in the United States. They were married in 1994. She is also a naturalized American citizen of Filipino ancestry. Their son was born in the United States in 2001, and is about to join the US Navy. Applicant's wife, son and father, also an American citizen, all currently live in the Philippines. Once his son enlists in the Navy, the plan is for Applicant's wife to join Applicant in the country where he currently works. Eventually, Applicant and his wife plan to return to the United States as their primary residence. (Government Exhibit 1 at Sections 17 and 18; Tr. 15-16.)

Applicant and his family moved to the Philippines after his retirement in 2009. Applicant reacquired Philippine citizenship in 2009, in expectation of living full-time in the Philippines. He lived in the Philippines with his family until 2015, when he went to work for the Navy as a contractor in another country. When in the Philippines during that period, Applicant went to school. (Government Exhibit 1 at Section 12, Government Exhibit 2 at 7; Tr. 17-18.)

Applicant's wife, with minimal help from Applicant, ran a chicken rotisserie stand business in the Philippines for about three years. The business closed in 2015 or 2016 due to unprofitability. (Government Exhibit 1 at Section 20A; Tr. 18-19.)

While living in the Philippines, Applicant and his wife bought a house and some land. The house is worth approximately \$138,000. The land is worth about \$32,000. Applicant plans to sell the land, since he and his wife have decided not to build on it. (Government Exhibit 1 at Section 20A; Tr. 19-21.)

In connection with the business, and the properties they purchased, Applicant and his wife had three bank accounts in the Philippines. None of the accounts had a lot of money, and at least one of them has been closed. (Government Exhibit 2 at 8; Applicant Exhibits F and G; Tr. 22.)

Applicant realized that he would have to renounce his Philippine citizenship when he went back to work with the Navy. To that end, he renounced that citizenship in the presence of his security officer on February 10, 2016. He also had his Philippine citizenship document destroyed, and verified his allegiance only to the United States. (Government Exhibit 2 at 6, Government Exhibit 3; Tr. 21-22.)

Applicant provided a copy of his most recent American passport, valid from April 2013 to April 2023. That passport showed many Filipino visa stamps during the period Applicant still had dual citizenship with the Philippines. (Applicant Exhibit C.)

Paragraph 3 – Guideline E (Personal Conduct)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he made intentional misstatements on an Electronic Questionnaire for Investigations Processing he filled out on February 15, 2016. (Government Exhibit 1.) Applicant argued that any misstatements he made on the form were mistakes and unintentional on his part.

3.a. Section 17 of Government Exhibit 1 concerns Applicant's marital status. In answering that question Applicant properly identified his spouse, that she was born in the Philippines, and was an American citizen. The questionnaire also asked, "Provide your spouse's country(ies) of citizenship." Applicant stated that his wife was an American citizen. He did not further identify her as also being a dual citizen of the Philippines. Applicant testified that he misread the questionnaire on that point, noting that it is formatted differently than Section 10 of Government Exhibit 1, which concerned Applicant's dual or multiple citizenship information. (Tr. 23-25.)

3.b. Section 20A of Government Exhibit 1 concerns Applicant's foreign activities. Under that section, he identified his wife as the owner of the chicken rotisserie stand described above. Applicant did not identify himself as being a co-owner. Applicant was interviewed by an investigator for the State Department on June 29, 2016. In that interview he identified the business, stated it was not doing well financially, and that his wife was going to close it down. Applicant's involvement in this business was passive and minimal. (Government Exhibit 2 at 7-8; Tr. 25, 33.)

3.c. Section 20A goes on to ask about foreign property that is owned by Applicant. He properly identified the house as belonging to himself and his wife. He stated that the additional property was owned by his cohabitant. Applicant testified that he was confused by this answer himself, since it was obviously wrong. Applicant told the State Department investigator in June 2016 that the additional property was owned by himself and his wife, as shown in the Report of Investigation (ROI). (Government Exhibit 2 at 8; Tr. 25-27.)

3.d. Finally, Section 20A asks about any bank accounts Applicant may have in a foreign country. Applicant did not identify the three bank accounts he and his wife had in the Philippines. Applicant fully identified these accounts during his June 2016 interview, after admitting to the interviewer that he should have listed them. Applicant testified that he overlooked the specific part of the question that concerned foreign bank accounts. (Government Exhibit 2 at 8; Tr. 27-29.)

Mitigation

Applicant had a successful 20-year career in the Navy. He received many personal decorations. In addition, he has been successful after his return to the Navy as a civilian employee, as shown by positive evaluations and commendations. (Applicant Exhibits A, B, and E.)

The Philippines

I take administrative notice of the following facts. The Philippines is a multi-party constitutional republic. There are terroristic threats in several parts of the Philippines, particularly in the south. In addition, there are allegations of human rights abuses by members of the security forces.

The State Department's "U.S. Relations With the Philippines: Bilateral Relations Fact Sheet" states:

U.S.-Philippine relations are based on strong historical and cultural linkages and a shared commitment to democracy and human rights. The 1951 U.S.-Philippines Mutual Defense Treaty provides a strong foundation for our robust security partnership, which began during World War II. Strong people-to-people ties and economic cooperation provide additional avenues to engage on a range of bilateral, regional, and global issues. The U.S.-Philippine Bilateral Strategic Dialogue is the annual forum for forward planning across the spectrum of our relationship. There are more than four million U.S. citizens of Philippine ancestry in the United States, and more than 350,000 U.S. citizens in the Philippines, including a large number of United States veterans. An estimated 650,000 U.S. citizens visit the Philippines each year. . . . Manila is home to the only Veterans Administration regional office outside the United States. (United States Department of State, *U.S. Relations With the Philippines: Bilateral Relations Fact Sheet*, <https://www.state.gov/u-s-relations-with-the-philippines/> (last updated January 21, 2020).)

Policies

When evaluating an applicant's suitability for national security eligibility and 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 seeks national security eligibility 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 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 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

Paragraph 1 - 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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's wife and father live in the Philippines. Applicant attended school in the Philippines between 2009 and 2015. He and his wife also own property in the Philippines, have bank accounts there, and owned a small business. The evidence is sufficient to raise these disqualifying conditions.

The Philippines has significant internal terrorism threats that operate contrary to U.S. interests. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. (See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant is a proud American citizen and Navy veteran. His son is joining the U.S. Navy. Applicant's wife will join him outside the Philippines once their son enlists. The small business his wife owned and managed has closed, thereby vitiating any security concerns. The amount of money in the foreign bank accounts is minimal, and they are being closed. AG ¶¶ 8(a), (b), and (f) apply.

I have carefully considered the fact that Applicant's family lives in the Philippines. In this particular case, I find that Applicant has mitigated the security significance arising from their presence for the following reasons. The Philippines is a long-time ally of the United States, with a large American veteran population, of which Applicant was a part. Applicant has completely mitigated the security significance of the presence of his relations in the Philippines. Paragraph 1 is found for Applicant.

Paragraph 2 – 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 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 of concealment. The same is true for a U.S. citizen's exercise of any right or

privilege of foreign citizenship and any action to obtain recognition of foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

(a) applying for and/or acquiring citizenship in another country.

AG ¶ 11 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 11 including:

(a) the foreign citizenship is not in conflict with U.S. national security interests;

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

(e) the exercise of the entitlement or benefits of foreign citizenship do not present a national security concern; and

(f) the foreign preference, if detected, involves a foreign country, entity or association that poses a low national security risk.

Applicant decided to move back to the Philippines after retirement from the Navy and resume citizenship in that country. This is not an uncommon act. Once he decided to go back to work for the U.S. Navy, he renounced his Philippine citizenship and reaffirmed his loyalty to the United States. There is no allegation of an attempt by Applicant to conceal the fact of his citizenship in the Philippines. Nor was any evidence produced showing that there was any conduct on Applicant's part that would show a conflict between his loyalties and interests between the Philippines and the United States. As stated earlier, the Philippines is an ally of the United States with a strong American veteran community. All the mitigating conditions apply. Paragraph 2 is found for Applicant.

Paragraph 3 – Guideline E (Personal Conduct)

The security concern relating to the guideline 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 following will normally result in an unfavorable national security eligibility determination, security

clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility, or trustworthiness, or award fiduciary responsibilities.

The following mitigating condition is applicable under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

Applicant's answers on his security clearance questionnaire were not complete. However, I find they were not intentionally deceptive for the following reasons. First of all, with respect to allegations 3.a, 3.b, and 3.c, it is noted that Applicant's answers, while incomplete, put the Government on notice concerning those issues. Applicant properly identified his wife as a foreign-born American, that she owned a foreign business, and that a "cohabitant" related to him owned property in the Philippines. When questioned by a State Department investigator Applicant readily provided the complete and accurate information. Therefore, concerning those questions, I find there was no deliberate attempt to omit, conceal or falsify the information.

Turning to allegation 3.d, Applicant corrected the record during his interview with a State Department investigator. He fully disclosed information about the three bank accounts, the activity on the accounts, and the minimal amount of money in the accounts. This was four months after filling the questionnaire out, and was his first official opportunity to review and correct his answers. Under the particular circumstances of this case, his actions amount to a prompt, good-faith effort to correct the record. Applicant has mitigated the security significance of his misstatements on Government Exhibit 1. Paragraph 3 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, C, and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but warrant additional comment.

Applicant has shown himself to be a talented and patriotic American citizen, Navy veteran, and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his overwhelming sense of loyalty to the United States; and has minimized the potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence, Foreign Preference, and Personal Conduct 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant
Paragraph 3: Guideline E:	FOR APPLICANT
Subparagraphs 3.a through 3.d:	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 for a security clearance. Eligibility for access to classified information is granted.

Wilford H. Ross
Administrative Judge