



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-03917
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
08/26/2020

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 18, 2018. On March 17, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on April 3, 2020, and requested a decision on the written record without a hearing. On May 26, 2020, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 6. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the FORM and submit any additional information. He received the FORM on June 1, 2020, and did not respond. Items 1 through 3 contain the pleadings in the

case. Items 4 and 5 are admitted into evidence as Government Exhibits (GE) 1 and 2. Item 6 is appended to the record as Administrative Exhibit (AE) I. The case was assigned to me on July 21, 2020.

Procedural Matters

GE 2 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to GE 2. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of GE 2 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to GE 2 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that GE 2 could be considered as evidence in his case. Applicant received the FORM, including a copy of GE 2. He did not respond to the FORM or otherwise object to GE 2.

AE I is the Government's request for me to take administrative notice of certain facts about Venezuela that are supported by source documents, which are official U.S. Government publications. Without objection by Applicant, I have taken administrative notice of the facts contained in the request. Several of the source documents proffered in AE I have been recently updated. To ensure that I consider the most current political conditions in Venezuela, I *sua sponte* appended the updated documents to the record as AE II and have taken administrative notice of the facts contained therein. The updated documents did not contain facts that affected either the relative positions of the parties or my decision. The facts administratively noticed from AE I and AE II will not be repeated verbatim in this decision, but are summarized in the Administrative Notice section, below. For the record, the updated documents are:

- US. Department of State, Venezuela Travel Advisory, updated August 6, 2020.
<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/venezuela-travel-advisory.html>
- U.S. Department of State, Bureau of Diplomatic Security, Venezuela 2020 Crime and Safety Report, updated July 21, 2020.
<https://www.osac.gov/Country/Venezuela/Content/Detail/Report/0e6ed0e0-eb8e-44cc-ab81-1938e6c8d93f>
- U.S. Department of State, Bureau of Western Hemisphere Affairs– *Fact Sheet: U.S. Relations with Venezuela*, updated July 6, 2020.
<https://www.state.gov/u-s-relations-with-venezuela/>
- U.S. Department of State, *Country Reports on Terrorism 2019*, updated June 24, 2020.
<https://www.state.gov/wp-content/uploads/2020/06/Country-Reports-on-Terrorism-2019-2.pdf>

Findings of Fact

Applicant, age 59, is married with two adult children. He earned a bachelor's degree from a university in Venezuela in 1984. He has been self-employed full time in the information technology (IT) field since 2008. He has been employed part time by an IT defense contractor as an instructor since 2018. This is his first application for a security clearance. (GE 1)

Applicant, his wife, and eldest child are Venezuelan citizens by birth. Applicant entered the United States in 1991. He became a naturalized U.S. citizen by his own application in 2013. His wife and eldest child also became naturalized U.S. citizens. His youngest child is a U.S. citizen by birth. Applicant chose to become a U.S. citizen to fulfill his dream of "fully embracing the United States as his country" where he then had lived with his wife, raised his children, and worked for over 25 years. (GE 1 at 9-10, 19-20, 24-25)

Applicant's mother (age 83), sister (age 54), and two brothers (ages 56 and 60) are citizens and residents of Venezuela. They all reside in the state of Bolivar, Venezuela. His father, mother-in-law, and father-in-law are deceased. Applicant's mother is a homemaker. None of his siblings are employed by the Venezuelan government. He communicates by either telephone or email with his: mother, weekly; sister, monthly; and brothers, quarterly. He travelled to Venezuela in 2011 and 2015 to visit his family. (GE 1 at 26-30, 32; GE 2 at 4)

Applicant and his wife own an apartment in Venezuela that they purchased in 1991. This was their primary residence when they lived in Venezuela. The purchase price was approximately \$40,000. Applicant is not sure what the current value of the apartment is, but estimates that it has very little value due to the poor economy in Venezuela. The apartment is currently vacant. He does not intend to sell the property at this time, but may consider doing so if and when the economy improves. The apartment is not important to Applicant's overall financial situation. (GE 1 at 31; GE 2 at 3)

Applicant has sent money to his mother in the approximate amount of \$400 per quarter for the past 30 years. This money helps with her day-to-day expenses. He intends to continue these payments for the foreseeable future. He has owned his home in the United States since 2006. The record did not contain information concerning any other U.S. assets. (GE 1 at 12-14, 32; GE 2 at 3-4)

Administrative Notice

Venezuela is legally a multiparty, constitutional republic. However, for more than a decade, political power has been concentrated in a single party with an authoritarian executive.

The United States, along with nearly sixty other countries, recognizes Interim President Juan Guaido and considers the Venezuelan National Assembly (NA), which he currently leads, to be the only legitimate federal institution, according to the

Venezuelan Constitution. The United States works with Interim President Juan Guaido and his team on a number of areas of mutual concern, including humanitarian and migration issues, health issues, security, anti-narcotrafficking initiatives, and reestablishment of the rule of law. The United States proposed a Democratic Transition Framework in 2020 as a guide to help Venezuelan society achieve a peaceful, democratic transition.

Venezuela's previous presidents, the late Hugo Chavez (1999-2013) and Nicolas Maduro (2013-2019), defined themselves in large part through their opposition to the United States, regularly criticizing and sowing disinformation about the U.S. government, its policies, and its relations with Latin America. Maduro, who was not reelected via free and fair elections, clings to power through the use of force. Maduro's former regime has consistently violated and abused the human rights and dignity of the country's citizens, plundered its natural resources, and driven a once-prosperous nation into economic ruin with authoritarian rule and ruinous economic policies. Maduro's thugs have reportedly engaged in killings and physical abuse, detained political opponents, and severely interfered with the exercise of freedom of expression, all in a brutal effort to retain power.

Maduro and his associates use criminal activities to help maintain their illegitimate hold on power, fostering a permissive environment for known terrorist groups, including dissidents of the Revolutionary Armed Forces of Colombia (FARC-D), the Colombian-origin National Liberation Army (ELN), and Hezbollah sympathizers. Financial ties with FARC-D, ELN, and Venezuelan paramilitary groups facilitate the public corruption and graft schemes of the regime to include members of the armed forces.

Significant human rights issues exist in Venezuela including: unlawful or arbitrary killings, including extrajudicial killings by security forces of the former Maduro regime, including regime-sponsored armed groups; forced disappearances; torture by security forces; arbitrary detention by security forces; harsh and life-threatening prison conditions; political prisoners; unlawful interference with privacy; and lack of judicial independence. The former Maduro regime restricted free expression and the press by routinely blocking signals and interfering with the operations of, or shutting down, privately owned television, radio, and other media outlets. Libel, incitement, and inaccurate reporting were subject to criminal charges. The former Maduro regime used violence to repress peaceful demonstrations and repressed freedom of assembly. Other issues included: intimidation, harassment, and abuse of NA members, including denial of due process and parliamentary immunity; pervasive corruption and impunity among all Maduro-aligned security forces and in other national and state regime offices, including at the highest levels; trafficking in persons; violence against indigenous persons; and the worst forms of child labor, which the former regime made minimal efforts to eliminate.

Venezuela has one of the highest number of violent deaths in the region and in the world. Nationwide criminal developments in 2019 include that the state of Miranda

now ranks as the most violent state in Venezuela, with the state of Bolivar now in the second position.

Venezuela regularly ranks in international studies as one of the most corrupt countries in Latin America, and the world. In 2020, anti-corruption watchdog Transparency International rated Venezuela 173rd out of 180 countries in its Corruption Perception Index, rating Venezuela less corrupt than only Yemen, Syria, South Sudan, and Somalia. Corruption takes many forms, from motorists bribing traffic police to allegations of bribes and kickbacks in the allocation of government contracts. Corruption appears to have reached record levels in recent years, with government institutions becoming increasingly criminal in nature, including activities such as rampant corruption in the state-controlled food distribution, active black market dollar trading, gasoline smuggling, drug trafficking, illegal gold mining, and other activities.

The U.S. Department of State continues to assess Venezuela at Level 4 (out of 4), which indicates that travelers should not travel to the country due to crime, civil unrest, poor health infrastructure, kidnapping, and arbitrary arrest and detention of U.S. citizens.

Policies

“[N]o 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.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 §

7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). 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). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

Analysis

Guideline B: Foreign Influence

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, as follows:

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 following are potentially relevant disqualifying conditions under this guideline:

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

AG ¶ 7(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.

Applicant's close familial ties to his mother, sister, and two brothers establish AG ¶¶ 7(a) and 7(b) based on the heightened risk associated with Venezuela and the potential conflict of interest that arises from his connection to them. A heightened risk is associated with Venezuela due to Maduro's continued repressive, authoritarian, and anti-American regime which supports known terrorist groups. Moreover, violent crime, corruption, drug trafficking, and human-rights abuses are prevalent. Applicant bears the burden of persuasion to mitigate these concerns. (ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000))

Application of AG ¶¶ 7(a) and 7(b) is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). Family relationships can involve matters of influence or obligation. (ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003).

The following are potentially relevant mitigating conditions under this guideline:

AG ¶ 8(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;

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 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

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 for foreign influence or exploitation.

For the reasons set out in the discussion of AG ¶¶ 7(a) and 7(b) above, I cannot conclude that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his family and that of the United States. AG ¶ 8(a) is not established.

Applicant has established strong ties to the United States, where he has lived with his family for over 28 years. He has owned a home in the United States for 14 years. However, the record contains insufficient facts to overcome the equally strong ties that he has to his family in Venezuela, who are at a heightened risk of coercion or pressure from a foreign government. Under these circumstances, I cannot conclude that Applicant could be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

None of Applicant's familial relationships are casual; nor is his contact with them infrequent. There remains a potential risk for foreign influence or exploitation. AG ¶ 8(c) is not established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the AG, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, an 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.

I have incorporated my comments under Guideline B in my whole-person analysis, and I have considered the factors AG ¶ 2(d). I weighed the disqualifying and mitigating conditions under Guideline B, and evaluated all the evidence in the context of the whole person and the heightened risk associated with Venezuela. Applicant has not mitigated the security concerns raised by his close familial ties to citizens and residents of Venezuela. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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: AGAINST APPLICANT

Subparagraphs 1.a – 1.c: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge