



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



In the matter of:)
)
) ISCR Case No. 20-02788
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

October 19, 2021

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns under Guidelines B (foreign influence) and E (personal conduct). Eligibility for access to classified information is granted.

Statement of the Case

On August 30, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On December 16, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B and E. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 28, 2020, Applicant submitted his Answer to the SOR, and requested a hearing. On March 25, 2021, Department Counsel was ready to proceed.

On April 8, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On April 8, 2021, DOHA issued a notice scheduling the hearing for May 19, 2021. I convened the hearing as scheduled.

Department Counsel offered Government Exhibits (GE) 1 and 2, which I admitted without objection. Applicant testified and did not call any witnesses to testify on his behalf. He offered Applicant Exhibit (AE) A, which I admitted without objection. I held the record open until June 16, 2021, to afford Applicant an opportunity to submit additional evidence. He timely submitted Applicant Exhibits (AE) B through G, which I admitted without objection. Department Counsel did not request that I take administrative notice of facts about Mexico nor did he submit any documents pertaining to Mexico. On May 27, 2021, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 22-year-old self-employed business owner installing real estate signs, who seeks employment as an aircraft structural mechanic with a defense contractor. His prospective employer requires that he establish eligibility for access to classified information before beginning his employment. (Tr. 11-13)

Applicant graduated from high school in June 2017. He was awarded an associate in science degree in aircraft fabrication and assembly in December 2019, and is attending college part-time to earn a bachelor of science degree. He was also awarded a certificate of achievement in aircraft fabrication and assembly in August 2019. (AE F, AE G; Tr. 13-16) Applicant is not married and does not have any dependents. (Tr. 16)

Foreign Influence

Applicant was born in the United States in 1999, and is a U.S. citizen by birth. He received all of his education in the United States and has known no other country other than the United States. He has two younger sisters, who were also born in the United States in 2003 and 2010, and are U.S. citizens by birth. Applicant and his two sisters live with their parents. (GE 1; Tr. 17-18, 24) Applicant holds a U.S. passport issued in December 2015, and expiring in December 2025. (GE 1; Tr. 29-30)

Both of Applicant's parents are Mexican citizens and are residing illegally in the United States. His father came to the United States when he was 17 years old and his mother came to the United States when she was 19 years old. Both parents did so to seek better opportunities. His parents met after they arrived in the United States while working at a fast food restaurant and have been married for 22 years. Applicant's father has "worked every day since he first came here." He owns two businesses. Applicant's father has never been arrested nor has he ever filed for any type of public assistance. (GE 1; Tr. 19-21, 30-32) Applicant's mother also owns her own business. (Tr. 29)

Applicant self-reported his parents' immigration status on his October 30, 2019 SF-86 and was forthright and candid about their status during his December 5, 2019 Office of Personnel Management Personal Subject Interview (OPM PSI). (GE 1, GE 2) Furthermore, he was forthright and candid about his parents and their status during his hearing.

Applicant's parents have been attempting to change their immigration status for many years. Approximately 20 years ago, they began the process by hiring an immigration attorney to bring them into compliance with existing immigration laws. Post-hearing, Applicant submitted a May 21, 2021 letter from his parents' immigration attorney. Their attorney stated:

We are currently processing adjustment of status applications for [Applicant's parents] via the portion of the Immigration and Nationality Act (INA) known as "245(i)." You will find accompanying this letter copies of the initial receipts for our clients' respective applications. We anticipate favorable results from both of our clients' applications, which will result in them both obtaining legal permanent resident status in the United States if approved. (AE B)

Attached to the attorney's letter were copies of The U.S. Citizenship and Immigration Services receipts for their applications both dated March 29, 2021. Applicant submitted the same documents at his hearing. (AE A, AE B, AE C, AE D; Tr. 22-25, 32-34)

Applicant stated that his parents have lived in the United States their entire adult working lives. Their three children were born in the United States, all of their real and personal property are in the United States, and they earn their livelihood in the United States. Applicant's parents have owned their own home since about 2014. Applicant's parents pay their state and federal taxes every year, and their first loyalty is to the United States. As a business owner, Applicant's father provides employment to local residents. Applicant stated that his parents' intent is to pursue U.S. citizenship assuming their "green cards" are granted. (Tr. 22-23, 27-29)

Applicant earns approximately \$30,000 a year from his business installing real estate signs. He currently lives with his parents rent-free. (Tr. 25) He owns an automobile and is current on his car payments and insurance. (Tr. 25-26) If Applicant is hired by his prospective defense contractor, his goal is to move out from his parents and own his own home. (Tr. 27) If hired by his prospective defense contractor, he would not discuss any classified aspect of his job with his parents or anyone who was not cleared and did not have a need to know. (Tr. 27-28)

As noted, Department Counsel did not request that I take administrative notice of facts about Mexico nor did he submit any documents pertaining to Mexico. There is no evidence to suggest that Mexico is hostile to the United States, is an authoritarian state, or is an aggressive collector of intelligence (either industrial and military) related to U.S. information and technology. Applicant's parents do not live in Mexico and do not appear

to have connections to Mexico other than their citizenship, and it does not appear that the Mexican government or criminals in Mexico have are likely to attempt to influence Applicant's parents or Applicant.

Personal Conduct

The Government cross-alleged the foreign influence concern raised in SOR ¶ 1.a as a personal conduct concern in SOR ¶ 2.a. No additional facts were developed as a personal conduct concern that were not already discussed under foreign influence.

Law and Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 gravamen of the SOR under Guideline B for foreign influence is whether Applicant’s ties to Mexico should disqualify him from access to classified information. Under Guideline B for foreign influence, the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern is set forth 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 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

(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.

The starting point for the analysis is the country of Mexico. There is no evidence to suggest that the behavior of the Mexican government presents a national security concern particularly as it pertains to Applicant. The heightened-risk element is satisfied as a result of Applicant residing with his Mexican parents who have been residing illegally in the United States. Given Applicant's family ties to his Mexican parents, the Government has established its case under Guideline B. The above disqualifying conditions are raised by the evidence. Further review is necessary.

Conditions that could 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 or having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; and

(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.

Mexico's relationship with the United States and the heightened risk it presents place a burden on Applicant to mitigate the security concern. With that said, Applicant has multiple indicators that he is a mature, stable, responsible, and trustworthy person. He was serious, candid, and credible at the hearing. He appears to have cooperated fully and provided truthful information during the security clearance process and during his interview with an OPM investigator. He made a good impression upon me during the hearing.

I have considered the totality of Applicant's ties to Mexico via his parents. Applicant has a demonstrated record that he is a responsible, reliable, and hard working young adult eager to take advantage of the opportunities of working for a defense contractor. Given the fact that Applicant's parents originally came from Mexico, he understands and is sensitive to the nature of the security concern based on foreign influence. Having been born, raised, and educated in the United States, Applicant has a close relationship with the United States. His parents are hard working and productive illegal residents of the United States, who have applied for a change in their immigration status to permanent residents, which includes disclosure of their current address to the U.S. Citizenship and Immigration Services. Applicant's family ties to Mexico cannot be

dismissed; however, the strength of those ties are diminished given the facts and circumstances here. On balance, his ties to the United States are far stronger than the family ties to Mexico.

Given the totality of facts and circumstances, I conclude that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Mexican government or his parents who have Mexican citizenship. I further conclude there is no conflict of interest, because Applicant has developed such deep and long-standing relationships and loyalties in the United States that he can be expected to resolve any potential conflict of interest in the favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

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.

AG ¶ 16 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior . . . ; (2) any . . . inappropriate behavior; and (3) a pattern of dishonesty or rule violations.

AG ¶¶ 16(c) and 16(d) are established as well as the general concerns discussed in AG ¶ 15. Applicant is living in his parents' home. His parents are citizens of Mexico

residing illegally in the United States. This situation has created a situation that has raised concerns under this guideline. Further review is necessary.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; 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.

Full application of AG ¶¶ 17(e) and 17(g) is appropriate under this concern. Applicant has been completely "up front" from the onset of his background investigation about his parents' situation. The evidence supports the notion that Applicant's parents are decent hard-working people who wanted to provide the best they could for their children. They have applied to the INS for permanent residence status. They are relying on their immigration attorney, who has predicted that they should be receiving their "green cards" in short order.

Following the Supreme Court's ruling in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I have weighted the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that Applicant met his ultimate burden or persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility granted.

Robert Tuidor
Administrative Judge