



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



In the matter of:)
)
) ISCR Case No. 21-01418
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

February 11, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated security concerns regarding foreign influence. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is granted.

Statement of the Case

On November 3, 2020, Applicant submitted a security clearance application (SCA). On July 26, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (Foreign Influence). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on June 8, 2017.

On August 12, 2021, Applicant responded to the SOR in writing (Answer), attached two documents, and requested a hearing before an administrative judge of the Defense

Office of Hearings and Appeals (DOHA). On October 1, 2021, the case was assigned to me. DOHA issued a hearing notice on November 1, 2021, scheduling the hearing for December 1, 2021.

I convened the hearing as scheduled. Department Counsel presented two exhibits marked as Government Exhibits (GE) 1 and 2. She also presented a written request for administrative notice regarding the Arab Republic of Egypt (Egypt). I marked the two documents attached to Applicant's Answer as Applicant Exhibits (AE) A and B. At the hearing he presented four additional documents, which I marked as AE C through F. All exhibits were admitted without objection. Applicant raised no objection to the Government's administrative notice request. DOHA received the hearing transcript (Tr.) on December 8, 2021. (Tr. at 12-20.)

Findings of Fact

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 23 years old and was born in the United States. He has never married and has no children. His parents were born in Egypt, immigrated to the United States, and became naturalized U.S. citizens. Both of his parents have earned doctorate degrees in the United States. Applicant is a dual U.S.-Egyptian citizen due to his parents' Egyptian citizenships. Applicant attended college in the United States and earned his bachelor's degree in August 2020. Since then, he has worked for a U.S. defense contractor as an engineer. His employer is sponsoring him for a security clearance. He is a first-time clearance applicant. In March 2020, Applicant and two classmates co-founded a technology business (Business). He works on his start-up venture part time as the "Team Lead." (Tr. at 22, 24-29.)

Applicant has several aunts, uncles, and cousins who are citizens and residents of Egypt. He is closest to one cousin (Cousin) who is 24 years old, has an undergraduate degree in computer science, and is a software engineer. In about September 2020, the Cousin began assisting the Business by developing a software application for use with certain types of cellphones. Applicant regards his Cousin as a friend as well as a relative. They text frequently about the Cousin's work on the application and other matters. They talk on the phone weekly. Applicant last visited Egypt in September and October 2021 with his family. He met with his Cousin during that trip. (Tr. at 30-36, 42, 51.)

SOR Allegation and Applicant's Answer

Paragraph 1, Guideline B - The SOR sets forth a single allegation regarding the potential for foreign influence resulting from Applicant's relationship with his Cousin, who is a citizen and resident of Egypt. More specifically, the CAF alleged that Applicant is "involved in a business venture with [his] cousin, who . . . is currently serving in the

Egyptian military.” In his Answer, Applicant admitted that his Cousin is a citizen and resident of Egypt. He represented that as of the date of the SOR, his Cousin had finished his mandatory one year of service in the Egyptian army. Accordingly, Applicant denied this part of the SOR allegation. He explained further that the Cousin’s military service is followed by a mandatory nine-year period in the army reserves. Applicant further explained the role the Cousin has in the Business. The Business is owned by Applicant and two of his university classmates. Applicant specifically denied in the Answer that his cousin has ever been an owner of the Business or that he ever had any financial ties to the Business. (SOR at 1; Answer at 1.)

In the summary of his December 2020 background interview, the investigator wrote that Applicant:

claimed that he has partnered with his cousin . . . , a citizen of Egypt, as a self-employed start up business in 03/2020. This business was founded by [Applicant] and this cousin. (GE 2 at 15-16)

In his June 2021 responses to DOHA’s Interrogatories, Applicant affirmed that the investigator’s report accurately reflected the information he provided during the interview without any changes. In response to a different interrogatory, Applicant wrote that the Cousin was “in charge of app development,” that the Cousin “was not an initial member when the business was founded,” and that the cousin “joined the Team a few months later in 2020.” He also wrote that the Cousin “is not currently an owner in the business.” He further noted that “we do not conduct business outside of the U.S.” (GE 2 at 4-5.)

At the hearing, Applicant clarified the role of his Cousin in the Business and discussed certain misunderstandings due to his prior choice of words. He wanted to describe the Cousin’s role more accurately. He credibly testified that his Cousin was not a partner in the Business and that his role was better described as an unpaid intern or helper. The quote above from his background interview in which he is reported as using the word “partnered” is a misinterpretation of what he told the investigator. Applicant and his two partners considered the Cousin to be part of the “Team” because he was helping them, but he was not a “founder” or partner. (Tr. at 22, 32-40, 46-61.)

Applicant also testified about the origins of the Business. It began as a class project in 2017, when Applicant was in college. He and his two classmates submitted their classwork in a competition sponsored by a foundation. Their project won the competition and \$5,000 of prize money. They formally organized a legal entity for the Business in March 2020. Applicant and the two classmates are the sole owners of the entity. At the early stages of the Business, Applicant and his co-founders discussed the possibility of having the Cousin become a part of the Business, but they decided against that because it was not practical and was not important to the Cousin. (Tr. at 22, 32-40, 46-61; AE B at 2, 4.)

The Cousin, however, became involved in the Business to a limited extent in September 2020. At that time, he was serving on active duty in the Egyptian army. His

involvement in the Business was to develop part of the software required for the Business. The Cousin was happy to help the Business so that he could gain experience and build his resume as a recent college graduate. He was discharged from active duty in the Egyptian army in June 2021. He now works full time in the Egyptian office of an international business as a software developer. He is also pursuing his studies to earn a master's degree. (Tr. at 22, 32-35, 38, 40; AE A at 4.)

The Cousin's contributions to the Business on the software application has been his only work for the Business. Applicant has no plans for his Cousin to provide any future services on new projects for the Business. The Cousin was not paid for this work, and he has no expectation of receiving any compensation in the future. The Cousin never asked for anything in return for the help he provided. The Business applied for a patent on the Business's product, and the Cousin was not listed as a co-inventor. If the Business needed software expertise and the Cousin was not available to help the Business, Applicant and his partners could write the software themselves or hire someone to do it. (Tr. at 36-40, 50, 56, 59.)

Administrative Notice

Based upon the official U.S. government documents attached to Department Counsel's Request for Administrative Notice, I take administrative notice of the following facts regarding the country conditions in Egypt:

Although the United States and Egypt have certain strategic ties, Egypt and agents acting on behalf of Egypt have engaged in efforts to illegally purchase sophisticated U.S. weaponry and to conduct espionage. Terrorist organizations operate in Egypt and attack both Egyptian governmental assets and western assets, including those of the United States. In 2020, terrorist groups claimed responsibility for killing hundreds of civilians throughout the country. There are significant human rights issues in Egypt, including unlawful killings, extrajudicial killings by the government or its agents, forced disappearances, torture, life-threatening conditions in prisons, and serious restrictions on free expression, the press, and the Internet.

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." *Id.* 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." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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.

Adverse clearance determinations 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." Exec. Or. 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. See *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. See 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. See 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.

Analysis

Paragraph 1, Guideline B

The security concern under this guideline 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 potentially disqualifying conditions under AG ¶ 7 could apply to the facts of 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.

The record evidence establishes that Applicant's contacts with the Cousin, both as a foreign family member and as a foreign professional associate, creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Also, Applicant's connections to his Cousin create a potential conflict of interest between Applicant's obligation to protect classified or sensitive information or technology and his desire to help his Cousin. The potentially disqualifying conditions set forth in AG ¶¶ 7(a) and (b) are established.

The record evidence does not establish that Applicant has a substantial business, financial, or property interest in Egypt. Also, the Business is not foreign owned or foreign operated. It does not operate as a business in Egypt. The fact that a person who provides services for the Business is a citizen and resident of Egypt does not meet the requirements of this potentially disqualifying condition. Moreover, there is no heightened risk of foreign influence or exploitation or personal conflict of interest arising out of the ownership and operations of the Business as it is structured. All of its owners and managers are based in the United States as is the Business. Its only connections outside the United States is an unpaid software developer who assisted in creating part of the product's software. AG ¶ 7(f) is not established.

The guideline in AG ¶ 8 contains six conditions that could mitigate security concerns arising from foreign influence. Three of these mitigating conditions have possible applicability to the facts of this case:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶¶ 8(a) and (b) are established. The nature of Applicant's relationship with the Cousin is such that it is unlikely that Applicant will be placed in a position of having to choose between the interests of the Cousin or the Egyptian Government and the interests of the United States. Also, there is no conflict of interest because Applicant's sense of loyalty to the Cousin is minimal. Their relationship is as friends with a common interest in developing technologies and as relatives. Moreover, Applicant has deep and longstanding relationships and loyalties in the United States. It is the country of his birth, and education, and where he has started a business. He has also decided to use his education to work for a U.S. Government contractor supporting the U.S. military. He can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) is not established. Applicant's communications with the Cousin are not casual and infrequent.

Whole-Person Analysis

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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 applied the adjudicative factors in AG ¶ 2(d). Further comments are warranted. Applicant provided credible testimony and evidence that supports a conclusion that Applicant's relationship with the Cousin is different than what he described in his SCA and background interview. At the hearing, he described in detail the relatively small role the Cousin played in creating part of the software for the Business. In Applicant's effort to be fully transparent in his SCA and during his background interview, he failed to properly describe the actual role of the Cousin in the Business. Overall, the record evidence as described above leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by potential foreign influence.

Formal Findings

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

John Bayard Glendon
Administrative Judge