



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



In the matter of:)
)
) ISCR Case No: 21-01735
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esquire, Department Counsel
For Applicant: *Pro se*
04/07/2022

Decision

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Foreign Influence guideline. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On October 15, 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). Applicant responded in an October 21, 2021 Answer to the SOR, and requested that her case be decided by an administrative judge on the written record without a hearing.

On December 13, 2021, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing four Items and a Request for Administrative Notice, was mailed to Applicant on December 14, 2021, and received by her on December 26, 2021. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not respond to the FORM within the

time provided. She submitted neither additional information nor any objection to the FORM, and did not request additional time to provide a response. On March 8, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. I received the case file on March 14, 2022. Items 1 through 4 are admitted into evidence.

Department Counsel also submitted a request for administrative notice of certain facts about Poland, in the FORM. The facts detailed in the official U.S. Government publication that was attached to the request were neither disputed nor objected to by Applicant. Accordingly, I take judicial notice of those facts, a summary of which will be included in the following findings.

Findings of Fact

In her response to the SOR, Applicant admitted the allegations contained in the SOR without further elaboration, evidence, or explanation. These allegations involved the fact that her mother, father, sister, and brother are all resident citizens of Poland. Her admissions are incorporated into these findings of fact.

Applicant is 40 years old. She earned a bachelor's degree in Poland in May 2003, and a master's degree from a U.S. university in May 2008. She has never served in the military or worked for the governments of either Poland or the United States. This is her first application for national security eligibility, which she seeks in connection with her defense contractor position as a linguist in Poland that she obtained in February 2020. (Item 3; Item 4.)

Applicant was born and raised in Poland. In June 2003, after completing her education there, she was accepted into a one-year au pair program and came to the United States to travel and further improve her English language skills. While here on that J1 visa she applied for an F1 student visa, which was granted. She remained while pursuing her master's degree at a U.S. university from September 2004 until May 2008. She married a native U.S. citizen in March 2008, becoming a permanent resident until her naturalization as U.S. citizen in January 2012. Shortly thereafter, her divorce from her husband was finalized in June 2012. She has retained her Polish citizenship and has active passports from both nations. She claimed to have "equal allegiance to the U.S., Poland, and [her] family in Poland." (Item 3; Item 4.)

After her divorce, Applicant lived in a home owned by her aunt and uncle when she was in the United States. She held full-time U.S. jobs from October 2018 to December 2019 and from August 2015 to September 2018, as well as part-time jobs from February 2016 to September 2018, and from April 2018 to June 2018. She also worked in two full-time administrative positions in the medical field from April 2012 to October 2013, and as a part-time caregiver for a U.S. home nursing company from July 2005 to February 2014. (Item 3; Item 4.)

During that time she returned to Poland on numerous occasions to visit family and look for employment there so she could move back. She was unsuccessful in finding a job in Poland until obtaining her current job in February 2020. Since her U.S. naturalization and divorce were final, she visited Poland from February 2014 to July 2015, from December 2017 to January 2018, from June 2018 to August 2018, and from December 2019 to present. She lived with her parents from December 2019 to February 2020, then moved into military housing on a Polish Army base where she works. She wanted to return and live in Poland to be close to her family. (Item 3; Item 4.)

As Applicant admitted in her Answer, her mother, father, sister, and brother are native citizens and residents of Poland. Her mother and brother are dentists, her father is a retired provincial commander of the State Fire Service, and her sister is an ENT doctor. Her mother and father are in their late sixties, and her siblings are 42 and 39 years old. (Item 2, Item 4.)

The record contains no other significant evidence concerning Applicant's job performance, trustworthiness, character in a professional setting, or track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person, since she elected to have her case decided without a hearing.

As noted above, I take administrative notice of the facts about Poland that were set forth in the official U.S. Government publication that was attached to Department Counsel's request for administrative notice. These include that Poland is a stalwart ally of the United States, who is a NATO member, and with whom a strong relationship and a shared commitment to freedom date back to the American Revolution.

Policies

The national security eligibility action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying. Two of them are established by 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; and

(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.

The mere possession of close family ties with a person who is a citizen of, or has close family members residing 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).

As noted by Department Counsel in the FORM, "While U.S.-Polish relations are generally positive, 'Guideline B does not differentiate between friendly and hostile countries.' As even 'countries with stable, democratic or representative forms of government engage in intelligence gathering' activities that place U.S. interests at risk." *Citing* ISCR Case No. 02-22461 (App. Bd. Oct. 27, 2005.)

Applicant has normal, commendable, and strong familial connections with her parents and siblings, all of whom are distinguished professionals. She returned to live and work in Poland after her divorce in order to maintain her close and regular contact with them. All of them are Polish citizens who reside in Poland. These relationships create a heightened risk of foreign pressure, coercion, and exploitation because Poland's close interactions with U.S. forces in pursuit of NATO objectives expose a range of sensitive and protected U.S. military and technology assets to intelligence gathering.

Applicant's citizenship, residence, and relationship with her family members in Poland, also create a potential conflict of interest between her obligation to protect sensitive information or technology and her desire to help family members and her native country, should she or they be pressured, manipulated, induced, or inclined to obtain access to such information. Further heightening these risks is Applicant's employment as a linguist for a defense contractor providing full-time direct support to U.S. and NATO military forces, and her residence on a Polish military base. The evidence is sufficient to raise these disqualifying conditions, shifting the burden to Applicant to prove mitigation.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

(a) the nature of the relationship 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.

Applicant did not establish that it is unlikely that she could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States as a consequence of her and her family's residences and citizenships in Poland. Those connections create continuing and significant potential for conflict of interest and risk of coercion, exploitation, manipulation, or pressure. Applicant also has minimal connections to the United States, where she moved in 2003 to work as an au pair, and then remained to obtain a master's degree in four years. She married a U.S. citizen in 2008, obtained citizenship in 2012, and divorced soon thereafter. She then began visiting Poland and seeking work so she could move back to her native country and be near her family. She retains her Polish citizenship, and she lives and works on a Polish military base. On balance, the evidence demonstrates significant potential for conflict of interest. Accordingly, Applicant failed to establish sufficient mitigation with respect to her relationships with her family and the nation of Poland under AG ¶¶ 8(a), (b), or (c).

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature and accomplished person, with commendable family relations. and an allegiance to them and to Poland. Nothing indicates any misconduct or behavioral concerns in this case. There remains significant potential for pressure, coercion, exploitation, or duress, however, which is most likely to continue. Applicant honestly expressed equal allegiance to the United States, Poland, and her family. While there may be no impediment to Applicant's eligibility for a Polish or NATO security clearance of some type, she failed to meet her burden to mitigate the concerns arising under the Foreign Influence guideline governing U.S. national security eligibility.

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:

AGAINST APPLICANT

Subparagraphs 1.a through 1.d:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for access to classified information. Clearance is denied.

DAVID M. WHITE
Administrative Judge