



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



In the matter of: )  
)  
) ISCR Case No. 20-01667  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2022

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns, but he did not mitigate the outside activities security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 11, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C (foreign preference) and L (outside activities). Applicant responded to the SOR on January 20, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on February 22, 2022. Department Counsel amended the SOR by withdrawing the Guideline C allegations, adding Guideline B (foreign influence) allegations, and amending the Guideline L allegations. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 7, 2022. He did not respond to the FORM or the amended SOR.

The case was assigned to me on May 13, 2022. The Government exhibits included in the FORM are admitted in evidence without objection. Department Counsel requested that I take administrative notice of certain facts about Country A. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that the United States and Country A enjoy a long tradition of friendly relations based on democratic values and mutual respect. Country A is a co-founder and steadfast strategic ally in the North Atlantic Treaty Organization (NATO).

### **Findings of Fact**

Applicant is a 67-year-old part-time employee of a defense contractor. He has worked for that employer since 2019. He is married with two children. (Item 4-6)

Applicant graduated from a military academy in 1979. He then served on active duty in the U.S. military until he retired with an honorable discharge as an O-6 in 2005. From 2005 to 2013, he worked for a U.S. company that provided consulting services to a defense contractor from Country A. In 2013, he accepted a position as senior director of marketing for the same Country A defense contractor's U.S.-based affiliate company, which is owned by the parent company in Country A. The U.S.-based affiliate is a limited liability company (LLC) that is registered in the United States. Applicant's duties have included providing unclassified briefings to the United States and other allied nations on the capabilities of the company's weapons systems. He also traveled to other countries for trade shows and briefings. (Items 3-6)

Applicant held a security clearance throughout his time in the U.S. military and while working for the U.S. company from 2005 to 2013. It lapsed when he left that employment. He applied for a security clearance with Country A in 2013 and 2015, but it was denied in 2017. (Items 3-6)

In 2019, Applicant accepted a part-time position with a U.S. defense contractor while continuing to hold his position with the Country A company's U.S. affiliate. The U.S. defense contractor has a contract with Country A to integrate the Country A company's weapons system into the U.S.-built F-35 aircraft. (Items 3-5) The F-35 is a family of fighter jets. It is made in the United States, but some parts and weapons are made by various NATO and other allied countries who have bought the jets.<sup>1</sup>

Applicant stated that for him to properly address the U.S. DOD requirements for the Country A company's product, he occasionally will need to attend classified meetings. He is supporting the U.S. defense company as a weapons subject matter expert for their contract with Country A. A security clearance will enable him to better serve the U.S. company in addressing U.S. Government requirements for integration and operation of a weapon from Country A into the F-35 aircraft. (Items 3-5)

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<sup>1</sup> See, e.g., <https://www.f35.com/f35/index.html>; <https://www.lockheedmartin.com/en-us/products/f-35.html>; [https://en.wikipedia.org/wiki/Lockheed\\_Martin\\_F-35\\_Lightning\\_II](https://en.wikipedia.org/wiki/Lockheed_Martin_F-35_Lightning_II).

## 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 security concern 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. 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; 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.

Applicant has worked since 2013 as senior director of marketing for a Country A defense contractor's U.S. affiliate. His duties include providing unclassified briefings on the capabilities of the company's weapons systems to the United States and other allied nations. He maintains contacts with business and professional associates who are citizens and residents of Country A and are employed in the country's defense industry.

Country A is a close ally of the United States and a founding member of NATO. Nonetheless, Applicant's contacts with Country A are sufficient to create a *potential* conflict of interest and a *heightened risk* of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

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 of 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.

Applicant served many years in the U.S. military. His work appears to be primarily related to the F-35, an aircraft that is made in the United States, but some parts and weapons are made by NATO and other allied countries who have bought the jets. Collaboration between countries on that project is mandated and expected.

I find 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 Country A, as those interests are closely aligned. I further find there is no conflict of interest, because Applicant has such deep and long-standing relationships and loyalties in America, that he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

### **Guideline L, Outside Activities**

The security concern for outside activities is set out in AG ¶ 36:

Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified or sensitive information.

The guideline notes several conditions that could raise security concerns under AG ¶ 37. The following are potentially applicable in this case:

(a) any employment or service, whether compensated or volunteer, with:

- (1) the government of a foreign country;
- (2) any foreign national, organization, or other entity;
- (3) a representative of any foreign interest; and

(4) any foreign, domestic, or international organization or person engaged in analysis.

Applicant has worked since 2013 as senior director of marketing for a Country A defense contractor's U.S. affiliate. AG ¶ 37(a) has been raised by the evidence.

SOR ¶ 1(b) alleges that Applicant "displayed and marketed [Country A defense contractor's] weapons systems to various international customers." While there is a slight difference between SOR ¶¶ 1(a) and 1(b) in that SOR ¶ 1(a) alleges Applicant's work for the U.S. affiliate, and SOR ¶ 1(b) alleges his work on behalf of the parent company, since the affiliate is owned by the parent company and all of Applicant's work benefits the parent company, I find the difference in the allegations is insignificant. I also find that the work alleged in SOR ¶ 1(b) is part of Applicant's responsibilities as an employee of the U.S. affiliate, and is therefore already encompassed in SOR ¶ 1.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.b is concluded for Applicant.

Conditions that could mitigate outside activities security concerns are provided under AG ¶ 38. The following are potentially applicable:

(a) evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States; and

(b) the individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

Applicant is still employed by the U.S affiliate of a defense contractor from Country A. AG ¶ 38(b) is not applicable.

Applicant main job is with the U.S affiliate. His part-time job is with the U.S. company that is sponsoring him for a security clearance. It appears that both jobs involve the F-35 aircraft. As indicated above, collaboration between countries on that project is mandated and expected. Based upon the relationship between the United States and Country A, its close ally, it is very possible that an appropriate security or counterintelligence office would evaluate Applicant's employment and indicate that it does not pose a conflict with his security responsibilities or with the national security interests of the United States. However, that has not been done in this case. AG ¶ 38(a) is not applicable.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and F in my whole-person analysis.

I also considered Applicant's many years of honorable service in support of our national defense; the fact that Country A is a NATO member and close ally of the United States; and the fact that the F-35 project involves many friendly countries. Applicant is the type of individual who would normally pass through the security clearance process without incident. However, the adjudicative guidelines are there for a reason. I am duty bound to follow AG ¶ 2(b), which requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns, but he did not mitigate the outside activities security concerns.

### **Formal Findings**

Formal findings for or against Applicant 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 L: | Against Applicant |
| Subparagraph 1.a:         | Against Applicant |
| Subparagraph 1.b:         | For Applicant     |
| Paragraph 2, Guideline B: | For Applicant     |
| Subparagraphs 1.a-1.b:    | For Applicant     |

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge