



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 20-02266
)	
Applicant for Security Clearance)	

Appearances

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

10/14/2022

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s personal ties and property interests in Kosovo raise security concerns about foreign preference. He did not mitigate those concerns and his request for a security clearance is denied.

Statement of the Case

On February 12, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for potential employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators at the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive

5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security for Applicant to have a security clearance.

On June 23, 2021, the DCSA CAF issued to Applicant a Statement of Reasons (SOR). The SOR alleged facts that raise security concerns articulated in the adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Specifically, this case concerns security concerns outlined under Guideline B (Foreign Influence).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on April 8, 2022. On May 17, 2022, I scheduled this case to be heard remotely using a video conferencing platform on June 29, 2022. The parties appeared as scheduled. I received a transcript of the hearing (Tr.) on July 8, 2022.

Department Counsel proffered Government Exhibits (GX) 1 – 4. GX 1 – 3 were admitted without objection. GX 4 presented the Government's request that I take administrative notice of information about Kosovo, the country at issue in this case. I granted that request and have considered herein the information provided in GX 4 as appropriate. Appellant appeared as scheduled and testified, but he did not present any documentary information.

Findings of Fact

The SOR alleged that Applicant's wife (SOR 1.a), children (SOR 1.b), parents (SOR 1.c), and siblings (SOR 1.f) are citizens and residents of Kosovo. The SOR also alleged that Applicant's best friend and his friend's wife (SOR 1.g), a sister-in-law (SOR 1.h), two childhood friends (SOR 1.i), and a niece (SOR 1.j) are all citizens and residents of Kosovo.

Further, the SOR alleged that between October 2007 and November 2015, Applicant resided at a U.S. military installation in Kosovo as part of his employment with a U.S. defense contractor, and that he maintained regular contact with his wife and children and other family members who were living in Kosovo during that period (SOR 1.d). Additionally, the SOR alleged that Applicant, his wife and his children, have lived in Kosovo with his parents since November 2015 (SOR 1.e).

Finally, the SOR alleged that Applicant's wife maintains a bank account in Kosovo with a balance of about \$12,000, which Applicant provided (SOR 1.k); and that Applicant owns three properties in Kosovo with an approximate total value of \$180,000 (SOR 1.l).

Applicant admitted all of the SOR allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 41 years old. When he was born, Serbia, formerly a part of the now-dissolved Yugoslavia, controlled the Yugoslavian province of Kosovo, where he and his

family and friends all lived. When Kosovo declared independence in 2008, Applicant became a citizen of the newly-formed nation of Kosovo; however, he was always a citizen of Kosovo as it existed before the Kosovo War of 1998 – 1999 and subsequent independence from Serbia. He was raised and educated in Kosovo through his high school graduation in 1999. Between June and December 2002, he worked as a linguist for a U.S. defense contractor in support of U.S. forces operating as part of a NATO coalition put in place after the Kosovo War ended in 1999. (GX 2; GX 3; Tr. 27 – 28)

In December 2002, at age 21, Applicant traveled to the United States on a tourist visa. During that visit, he met a woman who was a U.S. citizen and they decided to get married. They arranged to be married in June 2003 before his tourist visa expired and he would be forced to return to Kosovo, and either obtain a new tourist visa or apply for entry to the United States for different reasons. After his marriage, he obtained permanent resident status in the United States by virtue of his marriage to a U.S. citizen. (GX 1; GX 2; GX 3; Tr. 28 – 29)

Applicant joined the U.S. Army on January 13, 2004. The following day, he and his American wife finalized their divorce. Applicant claims she did not want to move to his duty station in another state or to be married to someone who would have to move a lot for military assignments. He served as an airborne infantryman and deployed on multiple combat missions in the Middle East. By serving on active duty in the U.S. military, Applicant was able to become a naturalized U.S. citizen, which he did in October 2004. He received a security clearance in March 2007, and he was honorably discharged in September 2007. (GX 1; GX 3; Tr. 11 – 12, 29 – 32)

Two months after his discharge, Applicant returned to Kosovo. In 2007, he found employment there for the next eight years as a linguist with two U.S. defense contractors supporting the ongoing U.S. military mission. He later was promoted to a management position involving physical security requirements for the U.S. military installation in Kosovo that was his job site. He worked in that capacity in Kosovo until 2015, when the contract ended. During his employment, Applicant had access to classified information based on the security clearance he held in the Army. The record does not contain a reapplication for clearance between his 2007 discharge and the February 2019 application that is being sponsored by his new employer. (GX 1; GX 2; GX 3)

Applicant remarried in April 2006 and has two children. His current wife is a citizen resident of Kosovo. She has since been granted permanent resident status in the United States. Except for visits to Applicant's duty station in the United States, she has stayed in Kosovo since 2006, including while Applicant completed the last of his combat deployments to the Middle East before his discharge in 2007. His two children, now ages 8 and 13, were born in Kosovo after Applicant was discharged from the Army. (Answer; GX 1; GX 2; GX 3; Tr. 33 – 35)

Because Applicant's children were born abroad to a U.S. citizen, they were eligible for U.S. citizenship at birth, their status being derived from Applicant's U.S. citizenship.

However, they could not immediately receive U.S. citizenship because Applicant had not been physically present in the United States for five years before they were born. Thus, he was required first to establish their Kosovo citizenship (he obtained Kosovo passports for them), then obtain immigrant visas for each child and apply for their naturalization after the family returned to the United States, which they did in August 2020. The children are now dual citizens of the United States and Kosovo. (GX 1; Tr. 38 – 39; see also 8 U.S.C. § 1401(g))

Between 2007 and 2015, Applicant lived at the military facility in Kosovo that was his job site. His family remained at their home in Kosovo and Applicant was able to see them periodically during scheduled time off. This was required by the terms of his employment because he was on call at all times. In January 2019, he was hired by another U.S. defense contractor for work as a linguist at the same facility in Kosovo. His employment is contingent on his renewed eligibility for a security clearance. He testified that if he does not qualify for employment as a contractor in Kosovo, he will take his family back to the United States to find work. (Answer; GX 1; GX 2; GX 3; Tr. 11 – 12, 53 – 54)

After leaving his job in 2015, Applicant remained in Kosovo with his wife and children. He did not seek further work, choosing instead to be a stay-at-home father in Kosovo between 2015 and 2020 while his wife completed her college studies in Kosovo. In August 2020, after he had received the SOR and became uncertain about whether he would be able work as a linguist in Kosovo, Applicant and his family moved back to the United States where they rented a place to live so his children could attend school in the U.S. for the 2021 – 2022 school year. During the summers of 2021 and 2022, they returned to Kosovo. He appeared for his hearing virtually from Kosovo. While he wants his children to experience their heritage in Kosovo, he does not want them to attend the public schools there. However, he cannot afford private Kosovo schools without the income from his potential employment as a linguist there. Pending the outcome of this adjudication, he planned to return with his family to the United States so his children can attend school here. It is assumed that he has returned to the United States for the 2022 – 2023 school year. Applicant will bring his family back to Kosovo if he gets his clearance, and he eventually wants to retire there. (GX 1; Tr. 4, 25 – 27, 39, 50 – 52)

Applicant also owns three properties in Kosovo, which he purchased between 2014 and 2018. During his background investigation and counterintelligence screening for his linguist position, he estimated those properties were worth about \$180,000 total. At his hearing, he testified their value has likely increased significantly. When he is in Kosovo, Applicant and his family live in an apartment he owns. He leases the other two properties to a friend who uses one as a bar and restaurant business, and the other as storage for that business. (GX 1 – GX 3; Tr. 44 – 47)

Applicant does most of his banking through U.S.-based financial institutions. During his previous employment as a linguist, he opened a bank account in Kosovo for his wife to use while he resided at the U.S. military facility. At one point, he had deposited about \$12,000 USD in that account, but he now estimates there is about \$3,500

remaining. In his other U.S. accounts, Applicant has about \$50,000 in retirement savings and investment funds. He has been able to support his family through non-defense industry jobs while in the United States, proceeds from the two properties he leases in Kosovo, and a monthly disability benefit from the Department of Veterans Affairs (VA). When they are in Kosovo, his wife works as a teacher. When they were last in the United States, he worked as a delivery driver between November 2021 and May 2022. (GX 1 – 3; Tr. 54 – 58)

Applicant's parents are both retired teachers. When he and his family are in Kosovo, he visits or calls them almost every day. When he is in the United States, he calls them several times weekly. The same is true for his contact with his brothers and sisters, a sister-in-law, and a niece who are resident citizens of Kosovo. Applicant also has continuing contact with his best friend and his wife, and with two childhood friends when he is in Kosovo, but their interactions are less frequent when he and his wife and children are in the United States. None of Applicant's family members or his friends are employed by the Kosovo government; nor do they have any other connection to the government of Kosovo or any other foreign country. (GX 2; Tr. 40 – 43)

To properly assess the security significance of foregoing within the adjudicative guideline at issue, I have taken administrative notice of certain facts regarding Kosovo as presented in GX 4. Additionally, some of the information about Kosovo requires examination of the breakup of Yugoslavia and the ensuing Balkans War and Kosovo Conflict. To that end, I *sua sponte* have taken notice of information about that region and current U.S. involvement there that is available on the U.S. Department of State website (<https://www.state.gov>) and the CIA Factbook (<https://www.cia.gov>).

Since separating from Serbia and Yugoslavia, Kosovo has generally modeled its system of governance on western democracies. Since the end of the Kosovo War in 1999, the United States has been actively involved in helping Kosovo establish an independent judiciary and to provide for its own security. The U.S. and NATO have maintained a military presence in Kosovo as part of the Kosovo Force (KFOR) made up of troops from 28 countries. KFOR is still required in Kosovo to help counter instability caused by the influx from foreign fighters, such as ISIS, and large numbers of migrants displaced by the civil war in Syria and ongoing violence in Iraq and Kurdistan. Additionally, the U.S. Department of State has issued travel advisories for travel in certain parts of Kosovo where ethnic tensions and civil unrest continue to flare up and act as catalysts for terrorist activities.

Kosovo's political system is premised on open representation of its citizens and the emphasis on individual liberties and the rule of law. Nonetheless, human rights violations are not uncommon, mostly affecting under-represented ethnic minorities. The State Department's 2021 Human Rights Executive Summary stated the following:

Significant human rights issues included credible reports of: serious restrictions on free expression and media, including violence or threats of

violence against journalists; serious government corruption and impunity; and crimes involving violence or threats of violence targeting ethnic minorities or other marginalized communities. The government took steps to identify, investigate, prosecute, and punish officials who committed human rights abuses, but at times lacked consistency. Many in the government, the opposition, civil society, and the media reported instances of senior officials engaging in corruption or acting with impunity. The government sometimes suspended, removed offenders from office, or transferred the accused, and the justice sector sometimes took steps to prosecute and punish those officials who committed abuses, offenses, and crimes. Many corrupt officials, however, continued to occupy public sector positions.

Based on the foregoing, it is clear that Kosovo strives to be a stable, democratically-governed country, with interests consistent with those of the European Union and NATO. Nonetheless, there is a continuing need for a U.S.-led security presence. Persistent ethnic strife, terrorist activities, an uneven human rights record, and other conditions on which the State Department has based its travel advisories for Kosovo, all support a finding that there is a heightened risk associated with having personal and financial ties there.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly

consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; see also AG ¶ 2(b))

Analysis

Foreign Influence

The security concern under this guideline is stated at 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 Government's information, as well as Applicant's admissions to the SOR and his statements during his PSI and during counterintelligence screening for his most recent employment all support the SOR allegations. Additionally, based on the Government's information in support of its request for administrative notice of facts about Kosovo, conditions in that country present a heightened risk that Applicant's relatives and associates in Kosovo may be vulnerable to pressure or coercion as a means of compromising Applicant's willingness and ability to protect sensitive U.S. information.

The following AG ¶ 7 disqualifying conditions apply:

(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

(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.

AG ¶ 7(a) applies based on his close and continuing contacts with his wife, parents and other family members, as well as long-time friends, all of whom are citizen residents of Kosovo. AG ¶ 7(f) applies based on his continued ownership of three properties in Kosovo, the value of which, when compared to his stated income and savings, constitutes the majority of his net worth.

I also have considered the following pertinent AG ¶ 8 mitigating conditions:

(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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The record does not support application of any of these mitigating conditions. AG ¶¶ 8(a) and 8(c) do not apply because Applicant has frequent contact with his family and friends in Kosovo, a country that poses “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” His relationships with those citizen

residents of Kosovo is presumed to be close and he did not present any information that would rebut that presumption. Further, AG ¶ 8(b) does not apply because Applicant does not benefit from any deep ties to, or relationships in, the United States that might counterbalance his interests in Kosovo. Since leaving the U.S. Army in 2007, Applicant has lived continuously in Kosovo for most of the next 13 years, returning to the United States in August 2020 only because he was unsure of his ability to gain employment with a defense contractor that would allow him to remain in Kosovo. One effect of his choice to stay in Kosovo, even after his contractor employment ended in 2015, was that he his presence in the United States was not legally sufficient to allow his children to derive U.S. citizenship from him. He and his immediate family live in Kosovo at least three months out of each year, returning to rented housing in the United States only for the school year. If he could afford better schools in Kosovo through defense contractor employment, he would prefer to live in his native country. He also intends to retire there.

I also am mindful of Applicant's military service. It is highly significant that he willingly risked his life in service to the United States and its interests in the Middle East. On this point, he is owed a measure of gratitude. Yet, his five years of service constitutes his only real presence in the United States. As soon as he was discharged, he returned to Kosovo, started a family, and bought three properties between 2014 and 2018. Aside from the 2020 – 2021 and (presumably) the 2022 – 2023 school years in the United States, he has chosen to remain in Kosovo since 2007, regardless of his employment status. All of the foregoing sustains doubts about whether Applicant has any "deep and longstanding relationships and loyalties in the United States" that might cause him "to resolve any conflict of interest in favor of the U.S. interest."

AG ¶ 8(f) does not apply because Applicant's property and financial interests in Kosovo are significant. He estimates his property values have increased since the SOR was issued. In addition to his monthly VA disability benefits, the rental income he receives helps support his wife and children. As noted above, all of the available information probative of his finances shows that his holdings in Kosovo make up the majority of his net worth. On balance, the security concerns about foreign influence are not mitigated.

I also evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). In the context of assessing an individual's suitability for access to classified information, his circumstances must be examined with the protection of the national interest in mind. Those circumstances have changed significantly since Applicant first received a security clearance in connection with his military service. The government is not estopped from re-assessing an individual's suitability for access to classified information, particularly in response to new facts and circumstances. This decision is a recognition of the heightened risks associated with Applicant's close ties of affection for persons in a country that still presents a heightened risk of manipulation, pressure, or coercion aimed at leveraging an individual's access to classified information. When compared to Applicant's relatively minor presence in, or ties to, the United States, his personal ties and interests in Kosovo sustain doubts about the suitability of granting him access to classified information. Because protection of the interests of national security

