



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



In the matter of:)
)
) ISCR Case No. 22-00131
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Sean Bigley

April 19, 2023

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On May 2, 2022, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on May 24, 2022, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 17, 2022, scheduling the hearing for December 8, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 and 2 , which were admitted without objection, and Hearing Exhibits (HX) 1 and 2 for Administrative Notice. Applicant testified on his own behalf. Applicant offered 14 documents, which I marked

Applicant's Exhibits (AppXs) A through N. DOHA received the transcript of the hearing (TR) soon thereafter.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to The Russian Federation and to the State of Israel. Department Counsel provided an 11-page summary of the facts, supported by 23 Government documents pertaining to Russia, identified as HX 1. Department Counsel provided a 7-page summary of the facts, supported by 12 Government documents pertaining to Israel, identified as HX 2. Applicant's Counsel also supplemented the Government's documents as to Israel, supported by 13 Applicant documents. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, through 1.g. He denied SOR allegation ¶ 1.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old and is employed by a defense contractor, as "a Physicist." He has worked for the defense contractor since October of 2017. He is divorced and has twine boys by his former marriage. He also has one female child, by his cohabitant. (TR at page 16 line 4 to page 19 line 4, at page 38 line 7 to page 39 line 3, and GX 1 at pages 7, 21, 29, 31 and 37~38.)

Guideline B - Foreign Influence

1.a., 1.f. and 1.g. Applicant's cohabitant is a naturalized U.S. citizen, as evidenced by a naturalization certificate. (TR at page 19 line 5 to page 20 line 18, and AppX E.) A graduate from an American law school, she has been practicing law since 2021. (AppX N.) Applicant's cohabitant owns a studio apartment on the outskirts of Moscow worth about \$90,000, which she is trying to sell. Her annual salary is between \$80,000~\$90,000. She is not reliant on Applicant for financial support. (TR at page 24 line 23 to page 28 line 4, at page 34 line 18 to page 35 line 15, at page 39 lines 19~24, and AppX N.)

1.e. Applicant's 17-year-old twin boys are dual national of Russia and the United States, and live in New Jersey with their mother, Applicant's former spouse. He sees them "at least once a month," except in the summer, when they "spend a month or two" with their father. (TR at page 37 lines 9~21, at page 40 line 23 to page 41 line 2, and GX 1 at pages 37~38.) His five-year-old American daughter lives with Applicant and his cohabitant. (TR at page 13 lines 13~22, and AppX N.)

1.b.~ 1.d. Applicant's elderly, retired parents are citizens and residents of Russia. They are actively trying to emigrate to Israel, to be close to Applicants' sister who is a citizen and resident of Israel, not of Russia as is alleged. Her husband works "for a U.S.-based company." They have no connection with the Israeli government. (TR at page 23 line 1 to page 24 line 12, at page 31 lines 1~6, and AppX j.)

Administrative Notice

I take Administrative Notice of the following facts about Russia: The Russian Federation has a highly centralized authoritarian political system dominated by President Vladimir Putin. Russia violated Ukraine's sovereignty and territorial integrity in 2014 and 2022. Russia presents one of the most serious foreign threats to the United States.

I take Administrative Notice of the following facts about Israel: The State of Israel is a multi-parliamentary democracy. The U.S. Department of State has issued travel advisories for Israel. Jerusalem and Tel Aviv have been assessed as HIGH-threat locations for terrorism. However, Israel has been the United States' closest ally in the Middle East since it was founded in 1948.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information 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 access to classified information. 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 information.

Section 7 of Executive Order (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 relating to the guideline 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. Three 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.

Applicant's cohabitant was a citizen of Russia and still owns property there, his parents still live in Russia, and he has a sister who is a citizen of and resides in Israel. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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.

Applicant's cohabitant is now a U.S. citizen. All three of his children are Americans, and reside in the United States. His youngest daughter is native born. Applicant's parents are elderly and retired. His sister lives in Israel, but her husband works for an American company. Mitigation under AG ¶ 8 has been established. Foreign Influence is found for Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant has a distinguished history of working in the defense industry and is respected in the workplace. He performs well at his job. (AppXs B~D.) While he was born in Russia, he is an American by choice. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a~.1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge