



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



In the matter of:)	
)	
)	ISCR Case No. 23-01150
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. He mitigated the foreign preference security concerns. Eligibility for access to classified information is denied.

On August 16, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. Applicant responded to the SOR on August 24, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on September 21, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from the date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 12, 2023, and timely responded with a narrative (FORM Response). The case was assigned to me on November 9, 2023. The Government exhibits included in the FORM, marked as Items 1-4, and the FORM Response are admitted in evidence without objection. Item 5 is a motion that I take administrative notice of certain facts

about the country conditions in Poland, as well as its relationship with the United States as of September 15, 2023, as referenced in official U.S. Government documents. Those documents are admitted without objection as Item 5. Without objection, I take administrative notice of the facts contained therein.

Findings of Fact

Applicant is a 26-year-old U.S. citizen. He was born in the United States in 1997. In 1998, when he was one year old, his parents moved with him to Poland, where he has resided ever since. He became a naturalized Polish citizen in 2006. Since at least 2015, he has resided with his parents. In 2021, he obtained a bachelor's degree from a Polish university. He was scheduled to obtain a master's degree from a Polish university in July 2023, but the record is not clear as to whether he did so. His classes for both these degrees were funded by the Polish government. Since 2016, he has worked for a Polish company located in Poland. He has an employment offer from a U.S. defense contractor. He has a Polish fiancée, whom he planned to marry in August 2023, but his current marital status is unclear. He has no children. (Items 2-4)

Applicant's father holds U.S. and Polish citizenships. His mother holds U.S. and Ukrainian citizenships. Prior to 1998, they lived in the United States for 20 years, but after 1998, they have resided in Poland. Applicant's fiancée is a citizen and resident of Poland. He and his fiancée plan on living in Poland once they are married. He has two older brothers who are citizens of the United States and Poland and reside in Poland. There is no evidence that he has anything other than a close familial relationship with his parents, siblings, and fiancée. His closest friends are also citizens and resident of Poland. (Items 2-4)

In February 2023, when he submitted his Electronic Questionnaire for Investigations Processing (SF 86), he reported that he holds a Polish passport that was valid from October 2013 until October 2023. Between August 2014 and January 2023, he reported that he traveled extensively using this Polish passport. He also traveled extensively using an earlier Polish passport that expired in 2016. He holds a valid U.S. passport that expires in 2025. Earlier, he held a U.S. passport that expired in 2016. He had traveled using his current U.S. passport once when he visited the United States in 2019, and his now expired U.S. passport when he visited the U.S. in 2015. He also used a U.S. passport to travel prior to obtaining Polish citizenship in 2006. (Items 3, 4)

Applicant has never been a member of the Polish military. However, he has received education and healthcare benefits from the Polish government. He has voted in both Polish and U.S. elections. There is no evidence that he owns any real property in either the United States or Poland. He claimed that he has some family in the United States, but he did not specify who they are or their relation to him. He and his fiancée visited his family in the United States once on an undisclosed date. He claimed that he is involved in U.S. civic and community organizations such as the Ukrainian Orthodox Church of the USA. He acknowledged that he has few friends in the United States. (FORM Response; Items 3, 4)

Applicant claimed that his family in Poland could not be used to coerce or intimidate him into revealing classified information. He also claimed that his allegiance is to the United States, not Poland, and that he is willing to renounce his Polish citizenship. (FORM Response; Item 2)

In Item 5, the Government included information from the U.S. Department of State as of September 2023, about the United States' relations with Poland and the current conditions in that country. I take administrative notice of the information included in those documents including, but not limited to:

The United States and Poland are longstanding, staunch allies and are both members of the North Atlantic Treaty Organization (NATO). They partner closely on policies involving counterterrorism, human rights, nonproliferation, economic growth, and energy security. The United States and Poland are involved in regular and recurring joint military exercises. Poland has a stable government, and it is a party to a bilateral agreement on business and economic relations with the United States. (Item 5)

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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The "heightened risk" language in Disqualifying Condition ¶ 7(a) addresses an applicant's foreign contacts, not necessarily the foreign country involved. See, e.g., ISCR Case No. 08-0448 at 4 (App. Bd. Apr. 23, 2009) and ISCR Case No. 08-09211 at 3-4 (App. Bd. Jan. 21, 2010). Depending upon the particular circumstances presented in a case, one or more foreign contacts located in even a foreign country that is friendly to the United States may create a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion. A "heightened risk" is not a high standard to meet. It is a risk greater than the normal risk inherent in having a family member living under a foreign government. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013).

Except for one year right after he was born, Applicant has spent his entire life in Poland. Acknowledging that they are also U.S. citizens, all of his nuclear family are residents of Poland, and all but his mother are also citizens of Poland. His fiancée (possibly now his wife) is a citizen and resident of Poland. She is not a U.S. citizen. Given the aforementioned principles regarding the potential for a "heightened risk," I find that these circumstances create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Applicant's connections to his family members and to Poland itself present a potential conflict of interest. As a matter of common sense and human experience there is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Application of the AG is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). AG ¶¶ 7(a) and 7(b) are established, shifting the burden to Applicant to provide substantial evidence of mitigation.

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;

(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

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

There is no evidence that Applicant has anything but a close and continuing relationship with Polish family members and friends. However, the close and collegial nature of the relationship between the United States and Poland, and the fact that neither Applicant nor any of his family members work for the Polish government or military show that AG ¶ 8(a) has some applicability.

AG ¶ 8(b) does not apply. Applicant has longstanding ties to Poland, including living there almost his entire life, working there, going to school there, and having all his close family and friends there. By contrast, he provides little evidence of deep and longstanding ties to the United States. While he is a U.S. citizen and has some family members in the U.S., his ties to Poland far outweigh his ties to the United States. I cannot find that Applicant has shown that he will resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) does not apply. There is no evidence that his contact with Applicant's family members who reside in Poland is anything other than close and continuing.

AG ¶ 8(e) has some applicability as Applicant has disclosed his foreign contacts on his SF 86 and during his security interviews.

Guideline C, Foreign Preference

AG ¶ 9 explains the concerns about foreign preference stating:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at

concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

(a) applying for and/or acquiring citizenship in any other country.

After being born a U.S. citizen, Applicant acquired Polish citizenship. He has lived in Poland since 1998. The above-referenced Guideline C disqualifying condition is applicable.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 11. The following are potentially applicable:

(a) the foreign citizenship is not in conflict with U.S. national security interests;

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

(e) the exercise of entitlements or benefits of foreign citizenship do not present a national security concern; and

(f) the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk.

The United States and Poland are allies and share many of the same national security goals. Applicant has expressed a willingness to renounce his Polish citizenship. I find that all the aforementioned Guideline C mitigating conditions are applicable, and the foreign preference security concerns are mitigated.

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 have incorporated my comments under Guideline B and Guideline C in my whole-person analysis.

Overall, the record evidence showing Applicant's and his family's longstanding ties to Poland, as opposed to their less significant ties to the United States, leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the foreign influence security concerns. He mitigated the foreign preference 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 B:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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.

Benjamin R. Dorsey
Administrative Judge