



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



In the matter of:)
)
) ISCR Case No. 22-00337
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O’Reilly, Esq., Department Counsel
For Applicant: Todd Hull, Esq.

01/05/2024

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 19, 2020. On April 6, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on April 29, 2022, provided documents in support, and requested a hearing before an administrative judge. The case was assigned to me on April 11, 2023. On April 20, 2023, the Defense Office of Hearings and Appeals

(DOHA) issued a notice of hearing. I convened the hearing as scheduled on June 14, 2023.

During the hearing, Department Counsel offered Government Exhibits (GX) 1 through 4. Applicant testified and submitted exhibits (AX) A through D. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on June 22, 2023.

Administrative Notice

Department Counsel requested that I take administrative notice (AN) of certain facts about Armenia, Russia, and Ukraine, and about the United States' relations with those countries. These are detailed in the Government's administrative notice filings (AN I-III) respectively, which were admitted without objection.

Official pronouncements by the President, the Department of State (DOS), DOD, or other appropriate federal agencies on matters of national security are administrative facts for purposes of DOHA adjudications and must govern the judge's analysis. See ISCR Case No. 17-04208 at 3 (App. Bd. Aug. 7, 2019). Where appropriate, I have also taken administrative notice of updated and current information from appropriate federal agencies, consistent with my obligation to make assessments based on timely information in cases involving the potential for foreign influence. See ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.")

Findings of Fact

In his answer to the SOR, Applicant admitted in part ¶¶ 1.a-1.c, 1.h and 1.j, and admitted in full ¶¶ 1.d-1.g and 1.i, 1.k and 1.l with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence submitted, I make the following additional findings of fact.

Applicant is 47 years old. He was born in Armenia in 1976, when it was still a republic of the Soviet Union. In 1998, he completed a bachelor's and master's degree through a university in Armenia. Subsequently, from June 1998 through November 1999, he completed mandatory service with the Armenian army. In 2003, he completed a second master's degree. He married in 2004 and has two children, ages 16 and 18. (GX 1-2; AX A; Tr. 22-31, 60-72)

From about April 2008 through April 2010, Applicant worked in the translation center for the Armenian Ministry of Justice. Later in 2010, he and his family received visas under the DOS Diversity Immigration Program and entered the United States. In 2015, he and his wife became U.S. citizens, and they purchased a home in the United States for about \$512,000. His wife is a schoolteacher. (GX 1-2; Tr. 21-32, 55-57, 133-136)

Also in 2015, Applicant traveled to Armenia to visit his parents and close his Armenian bank accounts. In 2016, his children became U.S. citizens. Later that year, Applicant sponsored his parents to become U.S. permanent residents. They have since become U.S. citizens. Applicant's only sibling, his sister, is a U.S. citizen. Applicant's mother-in-law is also a U.S. citizen, and she lives with Applicant's family. They are estranged from Applicant's father-in-law. (GX 1-2; Tr. 28-31, 65-67)

Following his entry into the United States, from August 2010 through September 2014, Applicant worked for a U.S. Government organization. From September 2014 through June 2021, he worked in various positions as a contractor for another U.S. Government department. Since June 2021, he has been with his sponsoring employer as a business analyst performing contract work for DOD and another U.S. Government department. He currently earns an annual salary of about \$104,000 and does not have any other sources of income. He has never held a security clearance. (GX 1-2; AX A; Tr. 7-8, 25, 83-93, 133-134)

In April 2022, Applicant renounced his Armenian citizenship. He only holds financial accounts in the United States and recently sold one of the two properties that his family owned in Armenia. (See discussion below) He described being active in his church and community as well as voting in U.S. elections. He stated he has no intention of residing in Armenia again. (GX 1-2; AX B-D; Tr. 25-26, 31-32, 109)

The SOR alleges various foreign influence concerns under Guideline B. The evidence pertaining to the allegations is summarized below.

SOR ¶ 1.a is an alleged friend of Applicant who is a citizen of Armenia and served as a Consul General for the Armenian Embassy in the United States. Applicant detailed that he met this person in 2003 while he was in college. He described only seldom contact with her over the years including once in 2015 when he went to the Armenian Embassy to renew his passport. He last saw her in church in about 2018 and has not had any more recent contact. He believed she no longer worked for the Armenian Embassy and had returned to Armenia, but was unable to provide further details. (GX 1-2; Tr. 33-34, 87-88, 126)

SOR ¶ 1.b is an alleged friend of Applicant who is a citizen of Armenia and served as a director within a transnational economic commission based in Russia. Applicant clarified at hearing that this person was a distant relative who no longer works with the commission. She now works for the Armenian government in Armenia as an economist. Applicant stated that he communicates with her about once or twice a year and last called her in February 2023 to wish her a happy birthday. (GX 1-2; Tr. 34-38, 88-89, 128)

SOR ¶ 1.c is an alleged friend of Applicant who is a citizen and resident of Ukraine. At hearing, Applicant clarified that this person was his aunt who passed away in 2020, after he submitted his SCA. Applicant has no additional relatives or friends who are citizens or residents of Ukraine. (GX 1-2; Tr. 38-39, 90)

SOR ¶ 1.d is an alleged friend of Applicant who is a citizen and resident of Russia. At hearing, Applicant stated that this person was a childhood friend and dual citizen of Armenia and Russia who he last saw in 2015 in Armenia. This friend is in the lighting and electrical business and has no association with the Armenian or Russian governments. Applicant has never conducted any business with this friend, but they communicate two or three times per year around holidays and birthdays. (GX 1-2; Tr. 39-42, 90-92, 128)

SOR ¶ 1.e is an alleged friend of Applicant who is a dual citizen of Armenia and Russia, residing in Armenia. At hearing, Applicant clarified that he met this friend while serving in the Armenian army and was unsure whether this friend held Russian citizenship. This friend works as a jeweler in Armenia and has no government ties. Applicant communicates with him two or three times per year around holidays and birthdays. (GX 1-2; Tr. 42-45, 94, 128)

SOR ¶ 1.f is an alleged friend of Applicant who is a dual citizen of Armenia and Russia, residing in Russia. Applicant testified that this person was a childhood friend and that they served in the Armenian army together. This person works in home renovations in Russia, but has no association with the Russian or Armenian governments. Applicant stated that he last saw this friend in person in 2009 and last communicated with him in September 2022. (GX 1-2; Tr. 45, 95-100, 129)

SOR ¶ 1.g is an alleged friend of Applicant who is a dual citizen of Armenia and Russia and works on a Russian military base in Armenia. Applicant testified that this person was a friend who he met while serving in the Armenian army. Applicant has not had any contact with this friend since 2021, but believed that he was still employed as a driver on a Russian military base in Armenia. (GX 1-2; Tr. 48-50, 101-103, 129)

SOR ¶ 1.h is an alleged friend of Applicant who is a citizen and resident of Armenia and worked as a department head within a Russian-associated gas company. Applicant testified that this person was a friend who he met while serving in the Armenian army. Applicant recalled that this person continued to work for the gas company in Armenia, but was no longer a department head. Applicant stated that he communicates with this person once or twice per year around holidays and birthdays. (GX 1-2; Tr. 51-53, 103, 129)

SOR ¶ 1.i is an alleged friend of Applicant who is a citizen and resident of Armenia and serves as a department head within the translation center of the Armenian Ministry of Justice. Applicant described this person as a former colleague that he worked with from 2008 through 2010 while he was in Armenia. He stated that he speaks with this person once or twice per year around holidays and birthdays. (GX 1-2; Tr. 54-57, 105, 129-130)

SOR ¶ 1.j is an alleged friend of Applicant who is a citizen and resident of Armenia and serves as a department head within the translation center of the

Armenian Ministry of Justice. Applicant also described this person as a former colleague who he worked with from 2008 through 2010 while he was in Armenia. Since Applicant submitted his SCA, he learned that this person married, left her position within the translation center and moved to the Netherlands where she is currently a homemaker. Applicant last spoke with her in September 2022. (GX 1-2; Tr. 57-60, 107, 130)

SOR ¶ 1.k alleges that Applicant maintains contact with several individuals whom he served with in the Armenian army. In his SCA and during his interview, Applicant disclosed maintaining contact with several individuals that he previously served with in the Armenian army. At hearing, Applicant only recalled maintaining contact with those former military servicemen already discussed in SOR ¶¶ 1.e through 1.h and was unable to provide details regarding contact with any additional servicemen. (GX 1-2; Tr. 60-62)

SOR ¶ 1.l alleges that Applicant co-owns two apartments in Armenia worth approximately \$65,000. Applicant disclosed both properties in his SCA. One property was his apartment while living in Armenia. The other property was his childhood home that he co-owns with his parents. He testified that he sold his apartment in 2022. Applicant continues to co-own the second property with his parents and estimated it was worth about \$70,000. His cousin and aunt currently live in and maintain the property. (GX 1-2; Tr. 62-64, 108-119)

Applicant submitted copies of numerous awards he received as well as character reference letters from former work colleagues, some of whom held security clearances. They consistently stated that Applicant was a trusted and highly valued member of their teams and a skilled professional. Members of his community also stated that Applicant was a “family man” who spoke openly about his loyalties to the United States. (AX C-D)

The Republic of Armenia

Armenia declared its independence from the Soviet Union in September 1991 and is a parliamentary democracy. The United States established diplomatic relations with Armenia in 1992.

Following independence, Armenia has been involved in multiple conflicts over the years with neighboring Azerbaijan over the disputed region of Nagorno-Karabakh. The conflict increased significantly in 2020 and there were reports that Azerbaijani forces engaged in unlawful killings and cruel, inhuman, or degrading treatment of Armenian forces during that time. A ceasefire arrangement was reached in November 2020. However, in September 2023, Azerbaijan launched a military offensive reasserting control in the region. The United States has issued calls for an end to hostilities and unhindered humanitarian access in the region. (See U.S. State Department, *Country Reports on Human Rights Practices for 2022: Armenia*: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/armenia/> (March 20, 2023); U.S. State Department, *Secretary Blinken’s Call with Azerbaijani President Aliyev*:

<https://www.state.gov/secretary-blinkens-call-with-azerbaijani-president-aliyev-17>
(September 26, 2023))

The Russian government also assists Armenian security institutions and Armenia's economy has become increasingly dependent on Russian investment. However, Armenia is actively seeking increased U.S. engagement in support of its democratic ambitions, economic growth targets, and improved regional security. The U.S. role in Armenia has become more important as regional tensions increase following Russia's invasion of Ukraine.

The Russian Federation

The Russian Federation has a highly centralized authoritarian political system dominated by President Vladimir Putin. Russia presents one of the most serious foreign threats to the United States and has attempted to position itself as a great power competitor to the United States by undermining norms within the existing international system.

In February 2014, Russia annexed Crimea, claiming the area to be part of the Russian Federation. In September 2022, Russia occupied four more provinces in Ukraine, and in February 2022, Russia launched a full-scale invasion of Ukraine. As a result, the United States issued numerous sanctions against Russian citizens and has provided aid to Ukraine. DOS issued "Level 4 - Do not travel" warnings, for both countries.

Russia also remains a top cyber threat as it refines and employs its espionage, influence, and attack capabilities. Russia views cyber disruptions as a foreign policy lever to shape countries' decisions, as well as a deterrence and military tool. Russia remains a hostile country to the interests of the United States. See ISCR Case No. 19-00831 at 3 (App. Bd. July 29, 2020). Russia's war with Ukraine is ongoing.

Ukraine

The only allegation concerning Applicant's connections to Ukraine that make the facts contained in AN III relevant here is SOR ¶ 1.c, Applicant's aunt who lived in Ukraine and passed away in 2020. Given the ongoing war between Ukraine and Russia (see discussion above), there is an obvious foreign influence security concern involving Ukraine generally. However, Applicant has no current or recent connections to Ukraine to suggest an ongoing security concern related to him. Therefore, I will not expand on the facts contained in AN III about Ukraine.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard

indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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 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 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel and 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern 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 classified information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them, and the following are potentially applicable:

(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 classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; 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.

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).

AG ¶¶ 7(a) and 7(f) require evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s ties to a foreign country as well as each individual tie must be considered.

Additionally, “the nature of the foreign government involved and the intelligence-gathering history of the government are among the important considerations that provide context for the other record evidence and must be brought to bear on the

judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018).

With regard to Armenia, all of the above security concerns are established. Applicant maintains minimal contact with a distant family member and numerous friends who are citizens or residents of Armenia. These contacts include persons who work within or in support of the Armenian government. Applicant also continues to co-own a property in Armenia with an estimated value of \$70,000. These connections to Armenia are sufficient to raise a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Applicant's contact with persons who are citizens or residents of Russia is significantly less. Nonetheless, Russia is a hostile country to the United States. Given the relationship between Russia and the United States, as established in AN II, Applicant's connections are sufficient to raise a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶¶ 7(a) and 7(b) are established with regard to Applicant's contacts in Russia.

With the passing of his aunt, Applicant no longer has any connections to Ukraine. None of the security concerns are established with regard to SOR ¶ 1.c.

AG ¶ 8 provides conditions that could mitigate security concerns under Guideline B, including the following which 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

(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.

I have considered the totality of Applicant's ties to Armenia and Russia via his distant family members and multiple friendships. In particular, Russia's relationship with the United States, and the heightened risk it presents, place a very heavy burden on Applicant to mitigate the security concern. ISCR Case No. 17-04208 at 5 (App. Bd., Aug. 7, 2019) With that said, Applicant presented as very serious, candid and credible at hearing. He appears to have cooperated fully and provided truthful information during the security clearance process and during his background interview.

Applicant maintains contact with distant family members and numerous friends in Armenia. The contact with these individuals is minimal, primarily relating to greetings during holidays and birthdays. He also continues to co-own a property in Armenia with his parents. His contacts with individuals who have any association with Russia are also minimal and generally only include holiday and birthday greetings. Applicant has not spoken with his one friend that works on a Russian base in Armenia in two years.

Comparatively, Applicant has deep and longstanding relationships and loyalties in the United States. His wife, two children, parents, sister and mother-in-law are all citizens and residents of the United States. Applicant owns property and is financially invested in the United States. He is trusted in his employment and is an involved member of his community.

Recently, Applicant's ties to Armenia have further decreased. In April 2022, he renounced his Armenian citizenship. Later that year, he sold one of his two properties in Armenia. I find that it is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of the Armenian or Russian governments or his relationship with individuals residing in Armenia or Russia. I further find there is no conflict of interest as he has shown that his relationships and loyalties are in the United States, and that he can be expected to resolve any conflict of interest in favor of the United States. All of the above mitigating conditions are 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 have incorporated my comments under Guideline B in my whole-person analysis.

Following his move to the United States in 2010, Applicant spent several years working as a government contractor and serving the interests of the United States. Numerous character references and awards reflect his commitment to his work and community. Once he, his wife and children obtained U.S. citizenship, he sponsored his parents' move to the United States. They, along with his sister and mother-in-law, are now U.S. citizens. Applicant has since sold one of his properties in Armenia and renounced his Armenian citizenship.

I also had the opportunity to observe Applicant's demeanor during his hearing and found that he was credible and candid. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence 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:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Bryan J. Olmos
Administrative Judge