



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



In the matter of:)
)
) ISCR Case No. 23-01465
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On July 28, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). Applicant responded to the SOR on September 3, 2023, and requested a hearing before an administrative judge. The case was assigned to me on October 17, 2023. The hearing was convened as scheduled on December 13, 2023.

It is impossible to be too specific about Applicant and her family without exposing her identity. This decision will be as vague as possible to protect her privacy while still ensuring she receives a fair decision. Additional information is available in the transcript and evidence.

Evidence

Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about the country (Country X) where Applicant and her family were citizens before they immigrated to the United States. Without objection, I have taken administrative notice of the facts contained in the request. The pertinent facts are summarized in the written request and the fact sheets and will not be repeated verbatim in this decision. Of note, Country X is an authoritarian state. It is hostile to the United States, with an extremely poor human rights record. It supports international terrorism, and it conducts cyberattacks and espionage against the United States.

Findings of Fact

Applicant is in her 30s. She has worked for defense contractors for several years. She seeks to retain a security clearance (currently Secret, but she is applying for Top Secret), which she has held without any apparent incident since about 2019. She earned bachelor's and master's degrees from a prestigious university. She is married to a native-born U.S. citizen. She has at least one child who was born in the United States. (Transcript (Tr.) at 12-13, 16, 20, 26-28; Applicant's response to SOR; GE 1, 2)

Applicant was born a citizen of Country X. A close family member (cousin, aunt, uncle, niece, or nephew) is the dictator of Country X. Applicant's parents and their children, including Applicant, immigrated to the United States in the 1990s when she was young. They all became U.S. citizens. None of her immediate family members have ever returned to Country X or maintained contact with any of their family in Country X. (Tr. at 12-15, 20-22, 26-27; Applicant's response to SOR; GE 1-3)

Country X considers people who leave their country to be traitors, and the country has taken retaliatory actions against some of them. Applicant's parents changed their and their children's names when they came to the United States. Few people outside Applicant's immediate family are aware that she is related to Country X's head of state. (Tr. at 23-26; GE 1-3)

Applicant expressed her undivided loyalty and allegiance to the United States. She credibly testified that her connections to Country X and its dictator could not be used to coerce or intimidate her into revealing classified information. Applicant's husband testified to her loyalty to the United States, and that they have no ongoing concerns about Country X or its dictator. Applicant admitted that her mother still fears retaliation. (Tr. at 13-15, 33-34, 37-38; Applicant's response to SOR; GE 1, 2)

Applicant submitted letters attesting to her excellent job performance and strong moral character. She is praised for her trustworthiness, professionalism, reliability, and

discretion in the handling of national security information. She is recommended for a security clearance. (Tr. at 40; AE A-C)

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 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 a close family member who is the dictator of Country X, which is an authoritarian state. It is hostile to the United States, with an extremely poor human rights record. It supports international terrorism, and it conducts cyberattacks and espionage against the United States. That connection creates 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.

SOR ¶ 1.b alleges Applicant's parents' connections to Country X and its dictator before they immigrated to the United States. That information does not raise any current

security concerns independent of the concerns already alleged in SOR ¶ 1.a about Applicant's connection to the dictator. SOR ¶ 1.b is concluded for Applicant.

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.

I considered the totality of Applicant's ties to the dictator of Country X, an authoritarian state that is hostile to the United States, with an extremely poor human rights record. It supports international terrorism, and it conducts cyberattacks and espionage against the United States. The Appeal Board has regularly held that there is a rational connection between an applicant's family ties in a country whose interests are adverse to the United States and the risk that the applicant might fail to protect classified information. An applicant who has relatives in a hostile country has a "very heavy burden" of persuasion as to mitigation. See, e.g., ISCR Case No. 17-04208 at 5 (App. Bd. Aug. 7, 2019). In this case, it is not just the country that is hostile to the United States, Applicant's family member is hostile to the United States.

This is a difficult case because Applicant is intelligent, honest, loyal to the United States, a model employee, and a current clearance holder with no evidence of any security problems. She credibly testified that her connections to Country X and its dictator could not be used to coerce or intimidate her into revealing classified information. There is nothing about her that makes her anything less than a perfect candidate for a security clearance except her family connections to a dictator. There is a good reason her parents changed their and their children's names when they came to the United States. Country X considers people who leave their country to be traitors, and it has taken retaliatory actions against some of them. Few people outside Applicant's immediate family are aware that she is related to Country X's head of state. Her mother still fears retaliation.

Changing their names and keeping a close hold on their identities were prudent measures to protect Applicant and her immediate family. I also must exercise prudence because 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.” I am obligated to follow that directive, even though I have an extremely favorable view of Applicant as a person. She was unable to overcome the “very heavy burden” of persuasion as to mitigation. The above mitigating conditions, individually or collectively, are insufficient to overcome security concerns raised by Applicant’s connections to the dictator of Country X.

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. I also considered Applicant’s favorable character evidence. She is a good person who happens to be related to an extremely bad and dangerous person, a dictator of a country that is hostile to the United States.

Overall, the record evidence 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.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge