



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



In the matter of:)	
)	
)	ISCR Case No. 24-00702
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

12/23/2024

Decision

DORSEY, Benjamin R., Administrative Judge:

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

On July 9, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence, Guideline C, foreign preference, and Guideline E, personal conduct. Applicant responded to the SOR on July 12, 2024, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on September 4, 2024. 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 3, 2024. He did not provide a response or objections. The case was assigned to me on December 9, 2024. The Government exhibits included in the FORM, marked as Items 1 through 5 are admitted in evidence without objection. Administrative Notice (AN) I is Government’s 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 August 27, 2024, as referenced in official U.S. Government documents. Without objection, I take administrative notice of the facts contained therein.

Findings of Fact

Applicant is a 28-year-old U.S. citizen. He was born in the United States in 1996. He became a naturalized Polish citizen in 2000, based upon his parent's Polish citizenship. In 2006, when he was ten years old, his parents moved with him to Poland, where, except for extended visits to the United States, he has resided ever since. In 2016, he earned a diploma from a high school in Poland. Since March 2023, he has worked as a translator for a U.S. based government contractor in Poland. In June 2023, he came to the U.S. and resided here with his cousin, as his employer advised him he should be in the U.S. to complete his security clearance investigation. He returned to Poland sometime thereafter and continues to reside there. He failed to register with the U.S. Selective Service System (SSS). He claimed he did not know he was required to do so but will take the appropriate steps to register. There is no record evidence that he has done so. He has never married, and he has no children. (Items 2-5)

Applicant's father and mother hold U.S. and Polish citizenships. His mother resides in Poland and his father resides in the United States. His past employers have been both Polish and U.S. based. One of his U.S. based employments is a trucking company owned by his father. While the record is unclear, he appears to have briefly resided in the U.S. with his father while he worked for his father's company on a couple of occasions, but he returned to live in Poland when he found other work. Another of his U.S. based employers was a government contractor for whom he worked as a linguist in Poland in 2022. He received certificates of appreciation from the U.S. Army for his work with this contractor. (Items 2-5)

Applicant owns a vehicle and a motorcycle in Poland that he claimed are worth about \$10,000. He has a Polish checking account that had a balance of about \$1,000. He owns no property in the U.S. While he does not own Polish real property, he stands to inherit his parent's real property in Poland worth about \$300,000. He plans to live in the property once he inherits it, but also stated he does not know if his plans will change. (Items 2-5)

Applicant holds valid U.S. and Polish passports. He has used his Polish passport to travel internationally. At times, he claimed that he is willing to renounce his Polish citizenship and surrender his Polish passport. However, at other times, he indicated that he is not sure if he will do so. He feels an equal allegiance to the U.S. and Poland, but claimed that his loyalties lie with the U.S. He voted in the Polish presidential election in 2021. He has been inconsistent with his claims as to whether he will vote in Polish elections in the future. He has not voted in a U.S. election. He claimed he did not know that he was able to vote in U.S. elections while he resided in Poland, but now plans to vote in U.S. elections in the future. He has friends in both Poland and the U.S. He has some extended family, such as an uncle and cousins, who are dual U.S.-Polish citizens who reside in the U.S. (Items 2-5)

In AN I, the Government included information from the U.S. Department of State, as of August 2024, 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, democratic government, and it is a party to a bilateral agreement on business and economic relations with the United States. (AN I)

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;

(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

(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). 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).

With the above guidance in mind, I do not find that AG ¶ 7(a) is established. The Government has not met its burden to show that Applicant’s relationship with his mother creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Given the cordiality between the U.S. and Poland, along with the Polish Government’s democratic freedoms and norms, the risk associated with Applicant’s mother is no greater than the normal risk inherent in having a family member living under a foreign government.

AG ¶ 7(b) is established. Applicant has resided almost exclusively in Poland for about 18 years. Notwithstanding their U.S. citizenships, he and his parents are Polish citizens, and he and his mother have chosen to reside in Poland. His family has a home of significant value in Poland in which he has a future interest. All of the property he owns is in Poland. He went to school there and has largely worked there. He acknowledged his divided allegiance between Poland and the U.S. His significant and longstanding connections with Poland and his Polish mother and father create a potential conflict of interest between his obligation to protect classified or sensitive information or technology and his desire to help a foreign person, group, or country by providing that information or technology.

AG ¶ 7(f) is established. The aforementioned traits of the Polish government in relation to Applicant’s Polish property interests do not create a heightened risk of foreign influence or exploitation. However, he does have significant Polish property interests, especially in relation to his lack of U.S. property interests. Therefore, these Polish property rights could create a conflict of interest.

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;

(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; 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.

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 acknowledged that he has a divided allegiance between Poland and the United States. He has longstanding ties to Poland, including living there for most of the past eighteen years, going to school there, working there, and having his mother and some friends there. He has a future property interest in a home in Poland, owns vehicles there, and has a bank account there. He has voted in a Polish election and was equivocal about his plans to do so in the future. He provided little evidence of deep and longstanding ties to the United States. He owns no property here. He did not register with the SSS because he did not think he was required to, and he has not shown any civic involvement in the United States. He is a U.S. citizen and has some family members in the U.S., but his ties to Poland far outweigh his ties to the United States. I do not 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) is applicable as Applicant has disclosed his foreign contacts on his SF 86 and during his security interviews.

AG ¶ 8(f) is not applicable. Applicant has been equivocal about the importance of his future interest in his family's real property, and it is of significant value. While his other property in Poland appears to be less significant in terms of value, he has provided insufficient evidence to show how consequential those pieces of property are to his overall financial wellbeing. As such, he has not met his burden to show that these property interests are unlikely to result in a conflict.

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 are potentially applicable in this case:

- (a) applying for and/or acquiring citizenship in any other country; and
- (d) participating in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume and type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests.

After being born a U.S. citizen, Applicant acquired Polish citizenship through his parents when he was four years old. He has since participated in a foreign activity by

voting in a Polish presidential election in 2021. The above-referenced Guideline C disqualifying conditions are 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;
- (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. There is no evidence that voting in a Polish election presents a national security concern. I find that all the aforementioned Guideline C mitigating conditions are applicable, and the foreign preference security concerns are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations.

Most U.S. male citizens are required to register with the SSS when they attain the age of 18. Failure to do so is a criminal offense. Applicant did not register with the SSS when he turned 18, although he claimed that he was not aware of his need to do so. As his failure to register is potentially a crime, it is explicitly covered under Guideline J. AG ¶ 16(d) is not established.

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, Guideline C, and Guideline E in my whole-person analysis.

Overall, the record evidence showing Applicant’s longstanding ties to Poland, as well as his acknowledged divided allegiance between Poland and 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, and the personal conduct security concerns were not established.

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
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.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