



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



In the matter of: )  
)  
) ISCR Case No. 23-00704  
)  
Applicant for Security Clearance )

**Appearances**

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

03/21/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge

Applicant mitigated the security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. He failed to mitigate the security concerns under Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 20, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B, C, and E. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 25, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on October 16, 2023. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 4. Applicant did not submit a response to the

FORM, or object to any of the evidence offered by the Government. Items 1 through 4 are admitted in evidence. The case was assigned to me on January 30, 2024.

### **Administrative and Procedural Matters**

Department Counsel requested that I take administrative notice of certain facts about Poland. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. It is noted that Poland is one of the United States' stalwart allies in Central Europe and strongest partners in fostering security and prosperity regionally and throughout Europe. The two countries are closely partnered on NATO capabilities, counterterrorism, nonproliferation, missile defense, human rights, economic growth and innovation, energy, security, and regional cooperation throughout Central and Eastern Europe. Poland continues to meet its NATO defense spending commitments and has contributed to operations in Afghanistan, Iraq, Kosovo, as well as to operations against Islamic State. of Iraq and Syria. (Item 5)

### **Findings of Fact**

Applicant admitted all the allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He earned an associate degree in 2000. He married in 2005 and has two minor children. He has applied for a position with a contractor for the U.S. Government that is contingent upon him receiving a security clearance. (Item 2)

Applicant was born in Poland. His father immigrated to the United States in 1980 and became a naturalized citizen. Applicant, his mother, and brother joined his father in 1991. In 1997, Applicant derived his U.S. citizenship through his father as the child of a naturalized citizen. Applicant holds dual citizenship with Poland and the United States. Applicant's wife was born in Poland and is also a dual citizen of Poland and the United States. She also derived her U.S. citizenship. Their two children were born in Poland and are dual citizens of Poland and the United States. (Item 2)

Applicant stated that his loyalty is to both Poland and the United States. He has passports for both Poland and the United States. He uses his Polish passport to travel outside of the United States. He uses his U.S. passport to travel to and from the United States. He has renewed both passports. (Items 2, 3)

In 2015, Applicant and his wife moved to Poland and continue to reside there. His wife purchased a hotel in Poland. She has a U.S. business partner. The cost of the property was approximately \$600,000. Applicant's wife's family gifted her about \$250,000. Applicant and his spouse used their marital resources and his mother also provided money for their half of the investment. His wife's business partner provided the other half. Applicant runs the hotel, and his wife handles the business aspects. The business is struggling financially and barely covers the cost to maintain its operations. The partner has never taken an active role in running the business. When the business failed to be successful, the partner attempted to gain greater partnership control. When Applicant's

wife refused to agree, the bonds of trust deteriorated between the partners and has resulted in numerous lawsuits in Poland against Applicant and his wife in various courts.

Applicant and his wife have been delinquent in paying their Polish taxes on various occasions since 2015, and the government has frozen the hotel's accounts on multiple occasions. They continue to try and make the business profitable. He is hoping to get a security clearance so he can work in a position in Poland for the U.S. Government where he would receive income to support his family and provide financial stability. (Item 3)

Applicant and his wife own a home in Poland that is valued at approximately \$215,000. They have a mortgage through a Polish bank. They maintain bank accounts in Poland. The balances are used to pay their expenses. They do not have significant savings. They receive child tax benefits from the Polish Government of approximately \$110 monthly for each child.

Applicant completed a counterintelligence-focused security screening questionnaire (CFSSQ) in November 2022. In it, he stated he moved to Poland permanently in 2015 and he has no intention of returning as a U.S. resident. He has no intention of renouncing his Polish citizen and would not do so if it was a condition of employment. He stated he has allegiance to both Poland and the United States. He said if he worked for the United States while living in Poland, he would be loyal to the United States Government. He said he would not disclose U.S. Government secrets in order to protect his family, and he would report any issues to the U.S. Government if he were put in a situation where he would have to choose. (Item 4)

In his CFSSQ, Applicant admitted - that since 1996, he has used marijuana occasionally, usually two to three times a year. He last used it in 2022 with his wife while the children were at their friend's house. He said that he failed to disclose his marijuana use on his security clearance application (SCA) because he was unsure how to write it. (Item 4)

In December 2022, Applicant was interviewed by a government investigator. He authenticated the accuracy of the summary of interview in his May 2023 interrogatories. Applicant admitted that in the past seven years he used marijuana in the form of cannabis vaping, about four or five times, while in Poland where it is illegal. His last use occurred in about July or August 2022; after he applied for the job he is attempting to be hired on behalf of the United States Government. He said that on approximately one to two occasions, he believed cannabidiol (CBD) was present, which is legal. He did not see the harm in using marijuana despite being aware it was illegal. He told the government investigator that he used marijuana after he submitted his job application because he was not sure whether the use of marijuana would be a disqualifying event. He also was not sure how long the hiring process would take, and the drug use was not something he engaged in regularly, so he did not see any harm in having used it infrequently. He does not intend to use it in the future. (Item 3)

Applicant did not disclose any illegal drug use on his October 2022 SCA. Applicant told the government investigator that he did not disclose his marijuana use on his SCA because he did not feel marijuana or CBD fell into the category of controlled substances,

and he was not aware that these drugs were considered illegal at the Federal level in the United States.<sup>1</sup> However, when challenged by the government investigator, he admitted he willfully failed to disclose the drug use on his SCA because he was aware that it might disqualify him from working in the job for which he was applying. He also considered the possibility that disclosing drug use could cause a significant delay in the processing of his application, and he thought he could admit his use during a future security interview and discuss it then. Applicant intentionally failed to disclose his illegal marijuana use on his SCA. (Item 3)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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 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(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." 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information.

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<sup>1</sup> Applicant admitted during his government interview that he used both marijuana and CBD. Marijuana is illegal in Poland. The use of CBDs is not.

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 EO 10865 provides that 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;

(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; 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.

I considered the totality of Applicant's ties to Poland. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant, his wife, and children are dual citizens of Poland and the United States. They reside in Poland. They own a hotel and home there. Poland is one of the United States closest allies in Eastern Europe. There is no evidence that Poland exploits dual citizens or has an authoritarian government. There is no evidence that Applicant or his family are associated with the Polish Government. Concerns of human rights violations were not included in concerns raised about Poland. I do not find that the dual citizenship of Applicant, his wife or children create a heightened risk of foreign exploitation, manipulation, inducement, pressure, and coercion. AG ¶¶ 7(a) and 7(b) do not apply. I have considered that Applicant has substantial financial interests in Poland. However, I also conclude that I do not find that they create a heightened risk of potential exploitation, manipulation or coercion. I find AG ¶ 7(e) does not apply. I find for Applicant under this guideline.

### **Guideline C: Foreign Preference**

The security concern for foreign influence is set out in AG ¶ 9:

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. 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 rights or privileges of foreign citizenship any action to acquire or obtain recognition of 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;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;

(d) participation in foreign activities, including but not limited to: (1) assuming or attempting to assume any 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 concerns;

(e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and

(f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

The SOR alleged that Applicant is a derived United States citizen who has maintained residency in Poland since 2015. These facts do not support any of the above disqualifying conditions. I find for Applicant under this guideline.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal; professional, or community standing; (2) while in another country, engaging in any activity that is illegal in that country; (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

Applicant's marijuana use from 1996 through 2022 was alleged under the personal conduct guideline. He admitted using marijuana, which is illegal under Polish laws, U.S.

Federal law, and some state laws in the United States. Applicant deliberately failed to disclose his marijuana use on his SCA. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Failure to be honest during the security clearance process is not a minor offense. The United States Government relies on those who have access to its nation's secrets to be forthcoming. Applicant was not. There is no evidence that he made a prompt, good-faith effort to correct his falsification. His most recent use of marijuana occurred in 2022 after he applied for a job requiring a security clearance. His dishonesty on his SCA and knowingly using marijuana while in a foreign country where it is also illegal reflects poor judgment and did not happen under circumstances that are unlikely to recur. The above mitigating conditions do not apply.

### **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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B, C, and E in my whole-person analysis.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under the Guideline B, foreign influence, and Guideline C, foreign preference. He failed to mitigate the security concerns raised under Guideline E. personal conduct.

### **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.d:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge