



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



In the matter of:)
)
) ISCR Case No. 24-00850
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

09/02/2025

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by her spouse, an undocumented Mexican immigrant, and she mitigated the security concerns generated by her father, stepmother and stepbrothers, who are citizens and residents of Mexico. However, she failed to mitigate the security concerns generated by her relationship with her brother, a Mexican citizen and resident. Moreover, she generated a personal conduct security concern by serving as a conduit for the transfer of money from her brother, a U.S. resident, to her brother living in Mexico. Clearance is denied.

Statement of the Case

On October 17, 2024, the Defense Consolidated Adjudications Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence, and Guideline E, personal conduct, explaining why it was

unable to find it clearly consistent with the national security to grant security clearance eligibility. The CAS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On October 21, 2024, Applicant answered the SOR, admitting the allegations and requesting a decision based on the evidence on file rather than a hearing. On July 29, 2024, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government's arguments against Applicant's security clearance worthiness. The FORM contains six attachments, identified as Item 1 through Item 6.

Applicant received a copy of the FORM on January 9, 2025. She was given 30 days to file a response. She did not file a response, whereupon the case was assigned to me on April 1, 2025. After receiving the FORM, I admitted Items 1 through 6 into the record, and I took administrative notice of the facts set forth in 15 documents, compiled in Item 6, and identified as Court Exhibits (CE) I through XV.

Findings of Fact

Applicant is a 40-year-old married woman who lives with her husband. She was born in Mexico in 1984, and she immigrated to the United States with her family as an infant. (Item 3 at 9) She became a naturalized U.S. citizen in 2015. (Item 3 at 6) She graduated from high school in 2020 and has been working as a forklift operator since then. (Item 3 at 8-9)

Applicant and her husband have been married since 2011. (Item 3 at 17) He is an undocumented alien. He has been working with an immigration attorney to obtain permanent resident status since 2022. (Item 2 at 9) Per Applicant, this process has been delayed since the pandemic. (Item 2 at 9) Applicant and her husband have been homeowners for 14 years. (Item 3 at 7) Her husband has worked for a stone design company in the United States for 20 years. (Item 5 at 9)

Both of Applicant's parents are deceased. Applicant's stepmother and stepbrothers are citizens and residents of Mexico. She has had no contact with them since February 2023 when her father passed away. (Item 2 at 4)

Applicant has two brothers, B1 and B2. At some time in the mid-2000s, B1 was arrested in the United States, convicted, and subsequently deported to Mexico for selling drugs. (Item 2 at 2) According to Applicant, B1 now owns and operates a farm in Mexico. (Item 5 at 9) In 2007, 2009, and 2013, Applicant received money from B2, a construction worker living in the United States, intended for B1 in Mexico, which she deposited in her account before transferring it to B1 in Mexico. (Item 5 at 10) She contends that B2 sent the money through her to B1 to help B1 purchase farming supplies. (Item 5 at 10)

In 2022, B2 was arrested in the United States and charged with possession of methamphetamines with intent to distribute, a felony. (Item 2 at 2) Applicant posted bail for him in the amount of \$25,000. Applicant regrets transferring money given to her by B2 to B1 in Mexico. She thought that B2 earned this money through his construction job. (Item 2 at 4) She has had limited contact with B1 since he was deported and has no knowledge of any continued illegal activities since his deportation. (Item 2 at 4) She acknowledges that she should not have posted bail for B2, and she “understand[s] the importance of making decisions that are consistent with the values and expectations of someone seeking a security clearance, and [she has] distance[d] herself from any involvement with [her] brother.” (Item 2 at 4)

Administrative Notice

Mexico is a federal, presidential republic composed of 32 states. Transnational criminal organizations have a pervasive influence on Mexico. Mexico has a tremendous problem with violent crime, particularly crime perpetuated by transnational drug cartels that undermine the rule of law through exploiting corruption networks, committing acts of violence, and overpowering regional security forces. (CE VI at 34-36) Transnational drug cartels launder billions of dollars of illicit proceeds through U.S. financial institutions. (CE VI at 34-36) According to the Department of Homeland Security, illegal drugs produced in Mexico and sold in the United States kill more Americans than any foreign threat. (CE VI at 34) The threat of drug trafficking from Mexico to the United States is so extraordinary that then-President Obama declared a national emergency under the International Economic War Powers Act. (CE VI at 4) This national emergency was continued, most recently in 2024. (CE V)

Per the U.S. Department of State, the pervasiveness of violence in Mexico renders much of the country an extremely unsafe travel destination. The U.S. Department of State advises visitors to either completely avoid traveling, or to reconsider traveling, to 13 of these 32 states because of the high risk of crime and kidnapping. (Item 6 at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a

conscientious scrutiny 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline B: Foreign Influence

Under this Guideline, “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 [or] can 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.” (AG ¶ 6)

Mexico has a tremendous problem with violent crime, particularly crime perpetuated by transnational drug cartels that undermine the rule of law through exploiting corruption networks, committing acts of violence, and overpowering regional security forces. (CE VI at 34-36) Transnational drug cartels launder billions of dollars of illicit

proceeds through U.S. financial institutions. (CE VI at 34-36) Per the U.S. Department of State, the pervasiveness of violence in Mexico renders much of the country an extremely unsafe travel destination. Under these circumstances, Applicant's relationship with her stepmother, stepbrothers, and brother who are citizens and residents of Mexico, trigger the application of AG ¶ 7(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 if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion."

Applicant's father is deceased. Consequently, Applicant's past relationship with him does not generate any ongoing security clearance.

Applicant has not seen, nor spoken with her stepmother and stepbrothers since her father passed away in February 2023. Under these circumstances AG ¶ 8(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 applies."

Although Applicant's husband is an undocumented immigrant, he has been working for the same employer for 20 years, and he has owned a home with Applicant for 14 years. In addition, since 2022, he has been working with an immigration attorney who is helping him obtain permanent residence status. Under these circumstances, Applicant's marriage to him is mitigated by AG ¶ 8(c), "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."

Applicant exercised extremely poor judgment when she chose to send B1, a convicted felon and deportee living in Mexico, money for her brother living in the United States, particularly given the pervasiveness of drug cartels in Mexico and the amount of money laundering with which they are engaged. In doing so, she generated a heightened risk of foreign influence, under AG ¶ 7(a) that she failed to mitigate. Although the last transfer of money to B1 occurred 12 years ago in 2013, the nature and seriousness of this conduct outweighs the passage of time since the last transfer. Ultimately, I conclude that Applicant resolved subparagraph 1.b regarding her spouse's undocumented status, but failed to mitigate subparagraph 1.a with respect to her brother living in Mexico.

Guideline E: Personal Conduct

Under this guideline, "[c]onduct 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 or sensitive information." (AG ¶ 15)

Applicant exercised poor judgment when she allowed B2 to use her as a conduit for transferring money to B1, a felon who was deported from the United States after being convicted of selling drugs. Under these circumstances, AG ¶ 16(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,” applies.

When courts set bail, they are gauging flight risk, not criminal culpability. Further, defendants charged with crimes are entitled to a presumption of innocence until proven guilty. Consequently, Applicant’s decision to post bail for B2 after he was arrested for selling illegal drugs does not generate a security concern. I resolve subparagraph 2.c in her favor. Conversely, Applicant’s relationship with her brothers is a security concern under Paragraph 2 for the same reasons as those set forth in Paragraph 1.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, discussed above, and they do not warrant a favorable conclusion.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge