KEYWORD: Foreign Influence

DIGEST: Applicant is a dual citizen of the U.S. and Mexico, having been born in the U.S. of Mexican parents. He chose to pursue his higher education and profession in the U.S. He destroyed his Mexican passport when he learned it raised security issues. His wife was born in Ukraine, educated in the U.S., met and married Applicant in the U.S., and intends to become a U.S. citizen. Security concerns based on foreign influence are mitigated. Clearance is granted.

CASENO: 06-23918.h1

DATE: 09/14/2007

DATE: September 14, 2007

In re:	)	
	)	
----------	)	ISCR Case No. 06-23918
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT
Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT
Virginia Gomez, Esq.

SYNOPSIS

Applicant is a dual citizen of the U.S. and Mexico, having been born in the U.S. of Mexican parents. He chose to pursue his higher education and profession in the U.S. He destroyed his Mexican passport when he learned it raised security issues. His wife was born in Ukraine, educated in the U.S., met and married Applicant in the U.S., and intends to become a U.S. citizen. Security concerns based on foreign influence are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On March 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under B (Foreign Influence).

Applicant answered the SOR in writing on April 30, 2007, admitted all the allegations except one, and requested a hearing. The case was assigned to an administrative judge on July 6, 2007, and reassigned to me on July 25, 2007, based on workload. The case was heard as scheduled on August 22, 2007. DOHA received the transcript (Tr.) on August 31, 2007.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 33-year-old orbital analyst for a defense contractor involved in satellite development. He is a dual citizen of the U.S. and Mexico, having been born in the U.S. of Mexican parents (Applicant's Exhibit (AX) S at 4). He has never held a security clearance.

Applicant's supervisors and colleagues uniformly described him as talented, honest, hard working, and dedicated (AX E, J, T, X). He completed formal training on protection of proprietary information (AX F), and he enjoys a reputation for careful adherence to company rules and protocols for protecting proprietary and sensitive information (AX B, C, D). He demonstrated his familiarity with the protocols during his testimony (Tr. 31-33). He has received awards for technical excellence (AX G), and was rated as "highly effective" in 2004, 2005, and 2006 (AX H).

Applicant's father is a medical doctor and medical researcher. He is a citizen of Mexico. He received his medical degree in Mexico in 1971, was licensed to practice in the U.S. in 1974, and returned to Mexico in 1977 (AX Q). He is a department head at a government-operated medical institute in Mexico and a professor at a government-operated university in Mexico, but most of his income comes from his private practice (Tr. 36-39). Although the medical institute is a government organization, its members maintain academic and professional independence (AX P). He frequently travels to the U.S. to work on medical matters (Tr. 72).

Applicant's mother is a homemaker and has never worked outside the home. His brother is a dual citizen of the U.S. and Mexico, working in Mexico as an engineer (Tr. 41).

Although Applicant's parents own their home debt-free and enjoy a comfortable income, they live modestly and avoid ostentatious displays of their economic status (Tr. 39-40). None of his family members are active in politics (Tr. 40-41).

Applicant and his brother were born while their parents were living in the U.S., and they returned to Mexico with their parents in 1977. When Applicant was 18 years old, he went to the American Consulate in Mexico and told them he was concerned about losing his U.S. citizenship. He was assured he could retain his U.S. citizenship, and he renewed his U.S. passport (Tr. 56).

Applicant attended college in the U.S., graduating in May 2000 with degrees in aerospace engineering and electrical engineering (AX T). He began working for a defense contractor in the U.S. after graduating from college, and he obtained a master's degree in engineering management while working full time (AX V; Tr. 27).

Applicant obtained a Mexican passport in September 2002, for convenience and to avoid paying the foreign airport use tax when he visited his family in Mexico (GX 2 at 2; Tr. 55). He destroyed his Mexican passport in the presence of his facility security officer when he learned it raised security issues (GX 2 at 29).

Applicant maintains email contact with his family and talks to them on the telephone about every other week (Tr. 42). His family has visited him twice in the U.S., on his college graduation and on his wedding day (Tr. 42). He has visited Mexico about 12 times in the last seven years, mostly for family events (Tr. 43, 57; Answer to SOR). He belongs to a recreational flying club that sometimes flies to Mexico to enjoy the beaches or the scenery, and a charitable flying club that flies medical professionals and supplies to poor communities in Mexico (AX W; Tr. 57-58).

Applicant testified at the hearing that he does not regard himself as a dual citizen, but as an American (Tr. 56). He testified he cannot envision returning to Mexico. He appreciates the opportunity provided by the U.S. to attain success through his own efforts rather than family status or place of birth (Tr. 60-61).

Applicant was married in June 2007 to a citizen of Ukraine residing in the U.S. He met his spouse while she was in the U.S. on a student visa. They dated for about a year before they were married. Applicant sponsored her for status as a conditional U.S. permanent resident after they were married (Tr. 34). She intends to relinquish her Ukrainian citizenship and become a U.S. citizen as soon as she is eligible (Tr. 35; AX A). She is a certified public accountant and works for a large accounting firm in the U.S. (Tr. 35).

Applicant's father-in-law is a professor at a "construction university "in Ukraine. His mother-in-law previously was a department head within Ukraine's Ministry of Economic Affairs, but she now works for a private cell phone company (AX A; Tr. Tr. 46-47). They both reside in Kiev, the capital of Ukraine. They have never been involved in military or intelligence activities (AX A at 2).

Applicant has visited with his mother-in-law four times and his father-in-law twice. On one occasion the four of them went on vacation to Hawaii, and on another they spent two weeks together touring Europe. His in-laws did not come to their wedding. His mother-in-law visited shortly after their marriage and on his wife's graduation from college (Tr. 47-48). His in-laws speak very rudimentary English, and he cannot speak or understand Ukrainian. Applicant can speak some Russian, as do his in-laws, but they prefer to converse in Ukrainian (Tr. 49). He has no email or telephonic contact with them (Tr. 50). Applicant's wife communicates by email with her parents, telephones them once every one or two months, and visits them about once a year (AX A at 3).

Applicant's wife has two older brothers in Ukraine, who are college graduates but are unemployed (AX A at 2). His wife considers them "losers" and has no contact with them (Tr. 80).

At Department Counsel's request, and without objection from Applicant, I took administrative notice of relevant adjudicative facts about Ukraine (Tr. 13; GX 3-6; Hearing Exhibit (HX I).

Ukraine has a parliamentary-presidential type of government since becoming independent of the Soviet Union in 1991. It is undergoing profound political and economic change as it moves toward a market economy and multiparty democracy. After the first free elections in December 1991, presidential elections were marred by government intimidation and electoral fraud. The presidential election in 2005 and local elections in March 2006 were markedly more fair. Ukraine has significant human rights problems. Torture, arbitrary detention of persons critical of the government, and warrantless violations of privacy are illegal but common.

Ukraine inherited a military force of 780,000 from the Soviet Union, which is seeking to modernize. Ukraine participates in six United Nation peacekeeping missions and has a small number of troops serving in supporting roles with Coalition forces in Iraq.

Ukraine's foreign policy goals include membership in the World Trade Organization, the European Union, and the North Atlantic Treaty Organization. Ukraine has peaceful and constructive relations with its neighbors. Relations with Russia are difficult and complex, however, due to differing foreign policy priorities in the region, energy dependence, payment arrears, disagreement over stationing of Russian military forces, and some boundary disputes.

Ethnic Russians are concentrated in the southern and eastern parts of Ukraine, constituting about 17.3% of the population. They are suspicious of Ukrainian nationalism and support close ties with Russia. However, Kiev, where Applicant's in-laws live, is in the northern part of Ukraine (GX 3 at 1).

At Applicant's request, without objection from Department Counsel, I took administrative notice of the following relevant adjudicative facts about Mexico. Mexico is a federal republic. It is a friendly neighbor of the U.S., with whom it shares extensive commercial, cultural, and educational ties. Traditionally, Mexico has maintained its interests abroad and projected its influence through moral persuasion. Its foreign relations are based on the principles of nonintervention and self-determination. It does not target U.S. citizens to obtain military or economic information, nor does it coerce its own citizens to obtain knowledge about the U.S. To the contrary, the U.S. and Mexico collaborate on security issues ranging from terrorism to drug trafficking, as well as many other issues (AX O, R; Tr. 22-23).

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants

eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

CONCLUSIONS

Guideline B (Foreign Influence)

The SOR alleges Applicant's wife is a citizen of Ukraine living in the U.S. (SOR ¶ 1.a), her parents are citizens and residents of Ukraine (SOR ¶ 1.e), and her mother was a department head in Ukraine's Ministry of Economic Affairs (SOR ¶ 1.f).[1] It also alleges his parents are citizens and residents of Mexico (SOR ¶ 1.b), his father works for a government-run hospital in Mexico (SOR ¶ 1.c), and his brother is a dual citizen of the U.S. and Mexico residing in Mexico (SOR ¶ 1.d).

The concern under this guideline is as follows: "Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that

[1]SOR ¶ 1.f initially alleged Applicant's father-in-law was a Department Head within Ukraine's Ministry of Economic Affairs. At Department Counsel's request, and without objection from Applicant, I amended the SOR to conform to the evidence by substituting "mother-in-law" for "father-in-law." (Tr. 90-91.)

is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism." AG ¶ 6.

Three disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by "contact 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." AG ¶ 7(a). Second, a disqualifying condition may be raised by "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information." AG ¶ 7(b). Third, a security concern may be raised if an applicant is "sharing 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" AG ¶ 7(d). All three disqualifying conditions are raised by the evidence in this case.

Family ties with persons in a foreign country are not, as a matter of law, automatically disqualifying under Guideline B. However, such ties raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. *See* Directive¶ E3.1.15; ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 (App. Bd. Feb. 8, 2001). An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., 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, or the country is known to conduct intelligence operations against the U.S.

Security concerns under this guideline can be mitigated by showing that "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 U.S." AG ¶ 8(a). The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Applicant is clearly independent of his parents, but he enjoys a good familial relationship with his parents and brother. He is less close to his in-laws. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has rebutted that presumption for his two Ukrainian brothers-in-law, with whom he has no relationship. He did not indicate any particular affection for his mother-in-law and father-in-law, but he offered nothing to rebut the presumed ties of obligation to them. Neither Applicant's immediate family members nor his in-laws are engaged in military or intelligence activities, and they do not work for businesses involved in economic espionage.

Mexico is a friendly country with close ties to the U.S. Ukraine also is a friendly country, striving for acceptance by the U.S. and Europe. Neither country targets the U.S. for military or economic intelligence. Although Ukraine's human rights record is spotty, neither country has a reputation for mistreating its citizens or citizens of other countries to obtain military or economic intelligence. The nature of both country's governments, their human rights record, and their relationships with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether either Mexico or Ukraine would risk damaging their relationship with the U.S. by exploiting or threatening their private citizens in order to force a U.S. citizen to betray the U.S. After considering Applicant's family ties to Mexico and Ukraine individually as well as in totality, I conclude AG ¶ 8(a) is established.

Security concerns under this guideline also can be mitigated by showing "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b).

Applicant is close to his family in Mexico, and less close to his in-laws in Ukraine. However, he chose to be educated in the U.S., clearly regards himself as a citizen of the U.S., and saw his professional future as in the U.S. He was candid, sincere, and credible at the hearing. I am satisfied he would resolve any conflict of interest in favor of the U.S. Accordingly, I conclude AG ¶ 8(b) is established.

Security concerns under this guideline also may be mitigated by showing that "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." AG ¶ 8(c). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has regular contact with his family members in Mexico, but virtually no direct contact with his in-laws in Ukraine. Communication with his Ukrainian in-laws is severely inhibited by a language barrier. I conclude AG ¶ 8(c) is partially established for his in-laws in Ukraine.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant'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. AG ¶¶ 2(a)(1)-(9). Some of these factors were discussed above, but some merit additional comment.

Applicant was candid, sincere, and persuasive at the hearing. He has chosen a life and profession independent of his parents. He has impressed his colleagues as well as supervisors with his good character, hard work, and careful adherence to the protocols for protecting sensitive information. His enthusiasm for his work and his affection for the U.S. were obvious during the hearing. His spouse also appears to have broken from her past and is pursuing her future with him in the U.S.

After weighing the disqualifying and mitigating conditions under Guideline B, considering the nature of the countries involved, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline B	FOR APPLICANT
Subparagraphs 1.a-1.g	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman
Administrative Judge