



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



In the matter of:)
)
) ISCR Case No. 06-04787
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro se*

March 6, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 25 October 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B.¹ Applicant answered the SOR 14 November 2007, and requested a hearing. DOHA assigned the case to me 7 January 2008, and I convened a hearing 11 February 2008. DOHA received the transcript (Tr.) 20 February 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR paragraph 1 allegations. Accordingly, I incorporate his admissions as findings of fact. He denied the SOR paragraph 2 allegations. He is a 53-year-old senior principal engineer employed by a defense contractor since November 2003. He seeks to retain the security clearance he obtained in January 1994.

Applicant allegedly falsified a January 2005 clearance application (G.E. 1) by failing to disclose that he was living with a foreign national (SOR 1.b.) and failing to disclose three additional trips to Ukraine in 2004 (SOR 1.c.).² He also allegedly falsified a May 2007 sworn statement (G.E. 2) by claiming that his first trips to Ukraine began in February 2004 (SOR 1.c.). G.E. 1 fails to establish the alleged falsifications for the simple reason that it is a composite of two distinct documents, neither of which is demonstrably false. The first six pages of the exhibit is a complete SF 86 (EPSQ version 2.2) whose first page indicates that it was generated³ (and possibly signed) 28 January 2004. On that date, the form accurately reflects Applicant's two trips to Ukraine in 2003, and the foreign national had not yet moved in with him. The first six pages includes a complete signature block which is unsigned. The seventh page of the exhibit is a signature page from a different SF 86, that is numbered "Page: 8," contains different information than the unsigned signature page numbered "Page: 6," was signed by Applicant on 3 January 2005, and faxed by Applicant's employer at 0301 on 3 January 2005, as page 001 of the facsimile. Thus, G.E. 1 consists of six pages of information that was correct in January 2004, but not certified by the Applicant, and the Applicant's January 2005 certification of an eight-page document, the contents of whose first seven pages are unknown. Applicant's sworn statement does not support any finding of falsification, largely because it records a discussion in which both the Applicant and the investigator were working on the incorrect assumption that G.E. 1 was a complete document. Consequently, the government's evidence fails to overcome Applicant's denial of SOR 1.b. and 1.c.⁴

The government's allegation that Applicant falsified his May 2007 sworn statement by claiming that his first trips to Ukraine were in 2004 is similarly misguided. The only sensible reading of his sworn statement is as his discussion with the investigator about the information allegedly omitted by the Applicant on his clearance application, the reasons for the omissions, and providing the missing information.

²At hearing, Department Counsel indicated that the government would not pursue allegation 1.a. because his research revealed that the criminal record allegedly falsified involved misdemeanor crimes not required to be disclosed. Accordingly, I have stricken allegation 1.a.

³The document itself states "DATE SUBJECT SIGNED THE FORM: 2004/01/28." However an EPSQ automatically generates this date when the form is printed, regardless of when the form is actually signed.

⁴.My conclusions are further confirmed by Applicant's testimony at hearing that he completed several clearance applications during his first year or so with his employer, and thought he had provided updated information on those applications. Further, Applicant's sworn statement shows his obvious confusion about why the 2004 trips to Ukraine did not appear on his clearance application.

Applicant never stated that his first trip “ever” to Ukraine was February 2004. Indeed, such a statement would be silly to an investigator apparently working from G.E. 1, which clearly had the 2003 travel.

Applicant is a U.S. citizen, born, raised, and educated in the U.S. He traveled to Ukraine in August 2003, October 2003, and February 2004 for pleasure. Later in 2004, Applicant, through an internet marriage agency, began corresponding with a Ukrainian national by e-mail and regular mail. In May 2004 and three times between August 2004 and November 2004, Applicant traveled to Ukraine to visit with this prospective bride and her family.⁵ She immigrated to the U.S. in December 2004, and married Applicant in February 2005. She went to school in the U.S. and obtained certification as a physical therapy assistant. She has not traveled to Ukraine since immigrating to the U.S.

Applicant’s wife is a legal permanent resident of the U.S. and intends to become a U.S. citizen. She has applied for citizenship but is not yet eligible because of residence requirements. Her parents are resident citizens of Ukraine, with no connections to the Ukrainian government. Neither speaks any English, and Applicant speaks neither Ukrainian or Russian. Her father manages a bread factory; her mother is a housewife. Her sister is a resident citizen of Ukraine, with no connections to the Ukrainian government. She also speaks no English. She is a housewife. Applicant has little direct contact with his in-laws because of this language barrier.

Ukraine has a parliamentary-presidential type of government since its independence from the Soviet Union in 1991, and is undergoing profound political and economic change as it moves toward a market economy and multiparty democracy. However, 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 has good relations with the U.S., and its primary foreign policy goal is Euro-Atlantic integration, including membership in the World Trade Organization, the European Union, and the North Atlantic Treaty Organization. Ukraine also participates in six United Nation peacekeeping missions and has a small number of troops serving in supporting roles with Coalition forces in Iraq. 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. It is not a known collector of U.S. intelligence information, and is not known to target its expatriate citizens to obtain information.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant’s suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly

⁵At least one of these trips was required by INS to ensure the marriage was legitimate and not a visa scam. The November 2004 trip was when his fiancé immigrated to the U.S.

raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁶

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁷ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷Revised Adjudicative Guidelines, ¶ 6.

entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.⁸

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the country involved, Ukraine and the U.S. enjoy good foreign relations. It has not been demonstrated that the Ukrainian government is actively engaged in the collection of U.S. intelligence, or that it targets its expatriate citizens such that would make Applicant or his in-laws likely targets for coercion, duress, or influence.

Considering Applicant's circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited family contacts in with his in-laws. None of Applicant's in-laws have any direct connection to the Ukrainian government, and Applicant's contacts with them are so limited that they do not raise a concern over protecting classified information. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his in-laws in Ukraine. Accordingly, I resolve Guideline B for Applicant.

The government failed to prove its falsification case under Guideline E. The allegations covered by Guideline E were unsubstantiated. Accordingly, I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant
Subparagraph d: For Applicant
Subparagraph e: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph a: Stricken
Subparagraph b: For Applicant
Subparagraph c: For Applicant
Subparagraph d: For Applicant

⁸Revised Adjudicative Guidelines, ¶ 7.(a).

Conclusion

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

JOHN GRATTAN METZ, JR
Administrative Judge