

KEYWORD: Foreign Influence

DIGEST: Applicant is a native of Cuba who sought and received political asylum in the U.S. in 1993. He was joined by his wife and daughter in 1994. He, his wife, and his daughter are now U.S. citizens. His in-laws are permanent residents of the U.S. He left a daughter behind in Cuba, and he had no contact with her until she recently contacted him by email. His mother, brother, and sister are citizens and residents of Cuba. His mother lived with him in the U.S. from July 2000 to July 2001. He has no contact with his brother and sister. Based on his strong ties to the U.S., security concerns based on foreign influence are mitigated. Clearance is granted.

CASENO: 06-12025.h1

DATE: 07/20/2007

DATE: July 20, 2007

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In re:)	
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-----)	ISCR Case No. 06-12025
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a native of Cuba who sought and received political asylum in the U.S. in 1993. He was joined by his wife and daughter in 1994. He, his wife, and his daughter are now U.S. citizens. His in-laws are permanent residents of the U.S. He left a daughter behind in Cuba, and he had no contact with her until she recently contacted him by email. His mother, brother, and sister are citizens and residents of Cuba. His mother lived with him in the U.S. from July 2000 to July 2001. He has no contact with his brother and sister. Based on his strong ties to the U.S., security concerns based on foreign influence are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On September 29, 2006, 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 approved by the President on December 29, 2005, and implemented effective September 1, 2006 (AG). The SOR alleged facts raising security concerns under Guideline B (Foreign Influence).

Applicant answered the SOR in writing on October 25, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on April 11, 2007, and heard on May 30, 2007, as scheduled. DOHA received the hearing transcript (Tr.) on June 8, 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 43-year-old laser engineer for a defense contractor. He has worked for his current employer since January 2004. He worked as a laser engineer for another defense contractor from May 1999 to January 2004. He does not hold a security clearance. His manager and facility security officer regard him as talented, honest, hard-working, devoted, and of high moral character (Applicant's Exhibits (AX) A and B).

Applicant was born in Cuba. In 1983, he went to Russia, where he obtained a bachelor's degree in mathematics and physics from Moscow University in 1989. He married a Cuban citizen in August 1987. He returned to Cuba in 1989, taught at Havana University School of Nuclear Physics, and worked for a research institute in Cuba. He became politically unpopular because he considered the Cuban nuclear program "a farce," and he encouraged students in the nuclear program to move into other areas. He returned to Russia in 1993 at the invitation of his brother's ex-wife, intending to make his way to the U.S. He applied for and was granted political asylum in the U.S. in 1993 (AX I). His wife, a medical doctor, and his daughter, then four years old, came to the U.S. in 1994. He obtained a master's degree in physics from a university in the U.S. and was working on a doctorate when he left school to support his family (Tr. 8).

Applicant became a U.S. citizen in December 2001, and his wife became a U.S. citizen in February 2004. His daughter recently became a U.S. citizen (AX C; Tr. 28). He has two sons who are native-born U.S. citizens (AX D and E).

When Applicant left Cuba in 1993, he left behind a 5-year-old daughter. He had no contact with her until she contacted him by email about a year-and-a-half ago, asking about her brothers and sisters (Tr. 39). She is a university student and lives with her mother in Cuba. Although the record is somewhat unclear, it appears that the mother of this daughter is not Applicant's current spouse.

Applicant's mother, brother, and sister are citizens and residents of Cuba. A second sister in Cuba died in 2006. He has virtually no contact with his brother and sister (Tr. 57-58).

Applicant's mother resided with him in the U.S. from July 2000 to July 2001, when she returned to Cuba. She is 67 years old, a retired medical records clerk, and in poor health. She receives a retirement pension from the Cuban government. She has owned her home for 35 years (Tr. 42, 58-59). Applicant sends his mother \$100 or \$200 on an irregular basis, based on his feelings of obligation rather than any legal requirement. He has occasional telephone contact with her on special occasions (Tr. 45). His mother plans to visit him again in 2008 (Tr. 56).

Applicant is financially secure. He owns his own home with an assessed value more than \$400,000, as well as a second home assessed at more than \$336,000 and a condominium assessed at more than \$168,000 (AX F, G, and H). He has mutual funds worth more than \$8,000, retirement accounts worth more than \$77,000, and education accounts for his three children in the U.S. totaling more than \$20,000 (AX L).

Applicant's father-in-law and mother-in-law are Cuban citizens residing in the U.S. They also were granted political asylum in the U.S. (Tr. 48). They have not become citizens because of their limited ability to communicate in English. His father-in-law works for a commercial shipping company, and he earned more than \$116,000 during 2006, including almost \$69,000 in overtime (AX K).

Applicant was a member of a Communist youth organization as a student. He would have been unable to study physics or go to Moscow if he had not joined the organization (Tr. 65-66). However, his family members remaining in Cuba are not members of the Communist Party, nor are they politically active or members of any dissident groups (Tr. 64-65).

Cuba is a totalitarian state. The government controls all aspects of life through the Communist Party and its affiliated organizations, the government bureaucracy, and the Department of State Security. It has a poor human rights record because of beatings and abuse of detainees and prisoners, harsh prison conditions, arbitrary arrest and detention of human rights advocates, denial of fair trial, pervasive monitoring of private communications, limitations on freedom of speech and press, denial of peaceful assembly, and restrictions on freedom of movement, including selective denial of exit permits. The government and its agents are not known to engage in politically motivated killings or disappearances, but dissidents risk being jailed.

Cuba is a state sponsor of terrorism, maintains close relationships with Iran and North Korea, and has offered safe havens for terrorist organizations. The Cuban government has long targeted the U.S. for intensive espionage. Cuba's modus operandi in espionage operations is to use spies to infiltrate U.S. activities and U.S.-based anti-government organizations.

The U.S. and Cuba have had a strained relationship since the early 1960s. U.S. policy has been to isolate Cuba through comprehensive economic sanctions. At the same time, the U.S. has supported humanitarian efforts for a "Free Cuba," and has supported efforts to break the

“information blockade” by funding radio and television broadcasts and expanding access to independent information through the internet.¹

Applicant is well aware of the possibility of pressure on his family members in Cuba. He has considered that possibility and decided that he will report any such attempts and that he will resist them. His loyalty is to the U.S. and his family in the U.S. He was very emphatic about his reaction to any attempts to pressure his family: “I will definitely report and there won’t be any question about to whom I will be loyal. I mean I will be loyal to the United States that’s – that’s no question.” (Tr. 61.)

At the hearing, Applicant was intense and emotional when talking about his immediate family and in-laws who reside in the U.S. He was more detached and matter-of-fact when talking about his mother, and diffident when talking about his daughter, brother, and sister in Cuba.

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 AG. 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 the 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

¹I granted Department Counsel’s request to take administrative notice of adjudicative facts regarding the Cuban government and its human rights record (Tr. 26). I also granted Applicant’s request to take administrative notice of facts contained in the government’s supporting documentation (Tr. 40-41, 63).

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 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 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.

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). Applicant has virtually no contact with his brother and sister in Cuba, but he maintains regular contact with his mother and some passive contact with his Cuban daughter. I conclude this disqualifying condition is raised.

A disqualifying condition also 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). This condition is raised by Applicant's connections to his mother and daughter.

A security concern also 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). This condition is not raised, because Applicant's spouse and her parents reside in the U.S., have no connections to Cuba, and are deeply committed to the U.S.

Since the government produced substantial evidence to raise security concerns under AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. 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).

Security concerns under this guideline may 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). When family ties are at issue, 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).

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.

Applicant has no meaningful relationship with his brother and sister. He abandoned his daughter when he left Cuba in 1993, and he had no contact with her until she contacted him. He has responded to her contacts, but he appears to be a passive partner in the relationship. However, he has ties of affection and obligation to his mother, and could be placed in a position of choosing to protect his mother or the interests of the U.S. I conclude the mitigating condition in AG ¶ 8(a) is not established.

Security concerns under this guideline also may 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). Based on this record, I conclude Applicant’s sense of loyalty or obligation to his brother, sister, and daughter are “minimal.” His sense of obligation to his mother is more than “minimal,” but Applicant made it clear that both he and his mother understand the risk. Applicant’s economic status would allow him to financially support his mother if he needed to. The risk of detention and mistreatment by Cuban authorities is real, but is lessened by his mother’s lack of political involvement. Cuba is known to mistreat dissidents, but she is not a dissident. There is no evidence that Cuba’s espionage activities include mistreatment of its own citizens to indirectly coerce U.S. citizens.

Applicant severed his ties to Cuba when left in 1993 and sought political asylum in the U.S. His family ties, professional ties, his future, and his children's future are now all closely tied to the U.S. After weighing all the evidence, considering Applicant's testimony, and observing his demeanor at the hearing, I am convinced that he would resolve any conflict of interest in favor of the U.S. Accordingly, I conclude that the mitigating condition in 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). Applicant's contact with his brother and sister is virtually nonexistent. His contact with his daughter is recent, but passive, and does not appear to have progressed beyond casual social contact. However, he has regular contact with his mother and sends her money. His mother visited him for a year in 2000-2001 and is planning another visit. Considering the totality of Applicant's family contacts as well as his contacts with individual family members, I conclude this mitigating condition is not established.

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 is a mature, well-educated, very intelligent person. He rejected Cuba in 1993 and left his mother, brother, sister, and one daughter behind. His disdain for the Cuban government was obvious during the hearing. In contrast, he has developed very strong bonds in the U.S., and the intensity of those bonds was apparent at the hearing. Except for his mother, he has no significant ties of affection or obligation to anyone in Cuba. He has carefully considered the possibility that he could be pressured indirectly through his mother, and he has made a thoughtful decision to resist any such efforts.

After weighing the disqualifying and mitigating conditions under Guideline B, 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 conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs 1.a-1.h: 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