DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 12-07366
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

06/20/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,[1] I deny Applicant's clearance.

On 12 October 2012, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B, Foreign Influence and E, Personal Conduct.[2] Applicant timely answered the SOR, requesting a decision without hearing. The record in this case closed 28 March 2013, the day Department Counsel stated no objection to Applicant's response to the Government's File of Relevant Material (FORM). DOHA assigned the case to me 8 April 2013.

[1]Consisting of the FORM, Items 1-9 and Applicant's Response to the FORM (Response).

[2]DoD acted under Executive Order 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 1 September 2006.

Findings of Fact

Applicant admitted the allegations of the SOR. He is a jet-engine technician employed by a defense contractor since August 2010. He has not previously held an industrial clearance, but held a clearance while in the U.S. military from October 2006 to April 2008, when he was honorably discharged for medical reasons.

Applicant was born in the U.S. in February 1988. Both his parents were born in the U.S. In December 2009, he married the mother of his then-four-month-old daughter. He did so in order to provide her with medical benefits under his health insurance, knowing that she had been in the U.S. illegally since about 1996.

Applicant's wife was born in Mexico in October 1990. When she was about six years old, she was sent to live with her aunt, a naturalized U.S. citizen, in the U.S. She has remained in the U.S. since. She and Applicant began dating in October 2006. They married four months after their daughter was born. They also have a son together, born in July 2011. Both children were born in the U.S.

Shortly before Applicant and his wife married, they explored regularizing her status in the U.S. They learned that the process would require her to leave the country for at least a year while her residency petition was processed, and she might be banned from entering the U.S. for as many as 10 years because of her past undocumented residence in the U.S. Not surprisingly, and perhaps not unreasonably given their family status, Applicant and his wife decided to not pursue that avenue. They decided to wait and take advantage of any immigration programs that might be instituted to permit her to remain in the U.S. despite her undocumented alien status (Item 5).

Applicant had a valid clearance issued to him in May 2006. That clearance was suspended when he left the military in April 2008, but was apparently reinstated when he went to work for his employer in August 2010. Applicant's employment application is not in the record, so there is no indication whether Applicant told his employer that he was married to a foreign national. Applicant's Response to the FORM states that he gave his employer the information necessary to put her on his health plan, but deliberately did not tell them that she was his wife. He did list her as a foreign contact, but it is not clear whether that was in the context of his employment application or his benefits registration.

Applicant received his first security briefing in September 2010, and was advised of his requirement to report foreign contacts (Item 9). Applicant did not inform his employer that he was married to a foreign national until his clearance came up for reinvestigation and he completed a new clearance application in August 2011. His August 2011 clearance application (Item 4) incorrectly listed his marriage date as December 2010. However, Applicant's employer submitted an incident report (Item 6) that he had not previously reported this marriage. The employer's followup to the Government's inquiry confirmed that his wife was living in the U.S. and had not applied

for U.S. citizenship. The employer did not report that she was an undocumented alien, leading me to conclude that Applicant did not inform them of her undocumented status.[3]

Applicant's wife has applied for deferred action for childhood arrivals, a program that would end her undocumented residence in the U.S. for the duration of her deferral, but would not otherwise change her immigration status or confer any benefit (Item 7). Nor would it ultimately protect her from being deported as an undocumented alien. Applicant's wife had a March 2013 appointment at the application support center near her home, but the notice does not otherwise state what the appointment is for (Response).

Applicant's in-laws are resident citizens of Mexico. He has never met them, and has no contact with them. The record is silent regarding his wife's contacts with her parents during the time she has lived illegally in the U.S. The record is also silent regarding their contacts to, or relationship with, the Mexican government.

Applicant's immediate supervisor for the last year considers him honest and trustworthy and an excellent employee. He recommends Applicant for his clearance. However, he does not indicate any knowledge of the issues raised in the SOR.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline B (Foreign Influence) and Guideline E (Personal Conduct).

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 substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to 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.

[3]Applicant's August 2011 clearance application (Item 4) lists only an Individual Taxpayer Identification Number (ITIN), Form I-10 as his wife's documentation for her birth outside the U.S. This document is for Federal Income Tax purpose only (Item 8). The ITIN application form does not require the applicant to disclose their undocumented status. Nothing in the I-10 would inform the employer of her undocumented alien status.

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.[4]

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.[5] 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 entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.[6] In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.[7]

The Government established that Applicant's foreign contacts created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. The Government produced no information regarding the Mexican government. Consequently, I conclude that the Government is not concerned that Mexico seeks protected information or is associated with a risk of terrorism. Nevertheless, the information presented by the Government was sufficient to shift the burden to Applicant to demonstrate that he was not subject to potential influence because of his wife or in-laws.

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

[5] AG ¶ 6.

[6] AG ¶ 7.(a).

[7] AG ¶ 7.(e).

There is a rebuttable presumption that an Applicant has ties of obligation or affection to his wife's parents, whether he has actual contact with them or not. Similarly, Applicant's wife is presumed to have a sense of obligation or affection to her parents. The record is silent on her relationship with her parents since she came to the U.S. as a child. Have they communicated regularly by mail or electronic means? Have they visited her in the U.S? Have they provided financial support to her over the years or sent her presents? What is their relationship, if any, with the Mexican government? These are not questions the Government has to answer to establish that Applicant is potentially subject to exploitation or influence. They are questions Applicant must answer if he is to establish that he is not subject to such influence.

Similarly, Applicant's marriage to an undocumented alien subjects him to potential influence on her behalf. However, in this case, the potential sources for influence are limitless, not just from Mexico. Anyone could pressure Applicant by threatening to disclose her undocumented status in the U.S. Her acceptance into the deferred action for childhood arrivals program—not guaranteed—would lessen the pressure, but not eliminate it. Shining a spotlight on her status, even if known to U.S. immigration officials, coupled with the slightest innuendo about possible misconduct by her during her 13 years in the U.S. could embroil her in legal proceedings for many years. Her circumstances are fraught with peril until she is able to obtain legal residence in the U.S. I resolve Guideline B against Applicant.

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. His marriage to an undocumented alien, his failure to timely inform his employer that he was married not just to a foreign national, but an undocumented alien, and his inability to recognize how this might raise security concerns, raise serious issues about his judgment and reliability.[8]

From a humanitarian viewpoint, It was probably not unreasonable for Applicant to marry the mother of his new-born daughter to provide her with medical coverage through his employment. However, when he applied for employment that would require him to have a clearance, he owed it to his employer to truthfully report his relationship to his wife. He deliberately withheld from his employer that she was his wife. Presumably, he also withheld from his employer that she was an undocumented alien. He clearly did not want his employer to know her true status, either as wife or undocumented alien.

[8]¶ 16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 person may not properly safeguard protected information; (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 person may not properly safeguard protected information. . . ; (e) personal conduct, or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation or duress . . . (g) association with persons involved in criminal activity.

The only reasonable explanation for his failure to disclose her true status is his knowledge that her status as an undocumented alien could jeopardize his clearance. Any doubt he had about his responsibility to report his relationship with a foreign national and undocumented alien should have been resolved during his September 2010 security briefing by his employer. Yet, Applicant did not disclose her true status as wife to his employer until his August 2011 clearance application. The proof of that is the employer's August 2011 incident report to the Government that the employer had been unaware that Applicant was married to a foreign national. The incident report does not reflect that Applicant disclose her undocumented status.

Applicant's relationship with his wife, beginning in October 2006, raises criminal conduct concerns that reflect on his judgment, whether his conduct is directly criminal or merely aiding and abetting her criminal conduct. The fact that he concealed her true status—both as wife and undocumented alien—from his employer for more than a year raises its own judgment issues. His failure to disclose her undocumented status even then demonstrates further poor judgment.

There are three issues of security concern raised by Applicant's conduct cognizable under Guideline E. First, his conduct—and his inability to recognize the security concerns raised by it—constitute poor judgment. Second, he has placed himself in a position where he might be subject to duress or coercion over the possibility his wife might be revealed to immigrations authorities under more unfavorable circumstances than undocumented status. He might also be subject to duress or coercion for his complicity in his wife's criminal conduct. Finally, his willingness to conceal her true status from his employer, as well as continuing to conceal her status as an undocumented alien, demonstrates his awareness of the security concerns raised by her undocumented status, and only heightens the security concerns raised by her personal situation. I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge