



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



In the matter of:)	
)	
)	ISCR Case No. 13-00522
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: William F. Savarino, Esq.

11/06/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 20, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR)¹ to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant submitted a notarized response to the SOR on August 13, 2013, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on September 5, 2013. The Defense Office of Hearings and

¹ Applicant's name was misspelled in the SOR. The SOR was amended to correct the misspelling.

Appeals (DOHA) issued a notice of hearing on September 12, 2013, scheduling the hearing for October 8, 2013. The hearing was cancelled due to the government shutdown. DOHA issued another notice of hearing on October 16, 2013, scheduling the hearing for October 23, 2013. The case was reassigned to me on October 23, 2013. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on October 31, 2013.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor. He has worked for his current employer for almost ten years. He seeks to retain his security clearance, which he has held without incident since 2007. He has a master's degree. He is married with two minor children.²

Applicant was born in a foreign country (Country A). His father was a diplomat. In 1991, Applicant's father was assigned to Country A's embassy in the United States as the deputy ambassador. Applicant came to the United States with his parents and two of his siblings. His third sibling remained in Country A to finish school. Applicant's father was assigned to the embassy for about seven years, after which he returned to Country A. Shortly thereafter, Applicant's mother received an assignment at the same embassy as a secretary³ to the ambassador, and Applicant's father accompanied her back to the United States.⁴

Applicant attended college and graduate school in the United States, earning a bachelor's degree and a master's degree. While in college he met a native-born U.S. citizen and later married her. Their two children were born in the United States. Applicant became a U.S. citizen in 2003.⁵

Applicant's parents are citizens and residents of Country A. Applicant's father is not currently working. His mother works for an intergovernmental organization (IGO) that helps developing countries to combine their efforts and expertise to promote their common interests in the international arena. She is a secretary to the chair of the board of the IGO. The chair of the board is the former president of Country A.⁶

² Tr. at 31-34, 41-46; GE 1; AE A.

³ In this decision, secretary is used in the traditional sense as defined by Merriam-Webster's Dictionary as: "a person whose job is to handle records, letters, etc., for another person in an office." See <http://www.merriam-webster.com/dictionary/secretary>.

⁴ Tr. at 31-37.

⁵ Tr. at 33-34, 37-39; GE 1.

⁶ Tr. at 52-54, 60, 65-66; Applicant's response to SOR; GE 1-4; AE F.

Applicant has three siblings. Two of his siblings live in the United States as permanent residents. One of his siblings is a citizen and resident of Country A.⁷

Applicant does not own any assets in Country A; all his assets are in the United States. He visited Country A in 2000 and 2011. His parents occasionally visit Applicant and his siblings in the United States. Applicant and his parents maintain regular contact through electronic means. Applicant's father draws a pension from the government of Country A, but Applicant's parents are self-sufficient without relying on the pension. Applicant sends his parents about \$100 to \$200 per month as a sign of respect and appreciation for what they have provided him. His parents would like to immigrate to the United States within the next few years, after his mother retires.⁸

Applicant and his father operated a small business from about 2009 to 2011. Applicant's father imported precious and semi-precious gemstones from Country A, and Applicant helped him sell them through eBay and a web site created by Applicant. The venture never generated much income, and they chose to close the business.⁹

Applicant is highly regarded professionally and personally. His supervisor testified to Applicant's excellent job performance, work ethic, reliability, dependability, strict adherence to rules and regulations, and loyalty to the United States.¹⁰

The United States enjoys close relations with Country A.¹¹ The U.S. Department of State posted the following about the relationship between the United States and Country A:

The United States established diplomatic relations with [Country A] in 1961. The United States and [Country A] have a deep partnership characterized by mutual respect, mutual interest, shared values, and aspirations for a more peaceful and prosperous future. The United States respects [Country A's] record of democratic progress, which has made it a model for the region and beyond, and supports [Country A's] continuing efforts to strengthen the institutions of democracy. The United States is committed to working with [Country A] on nutrition and food security, energy, women's and children's health, HIV/AIDS, and sustainable development.¹²

⁷ Tr. at 50-51; Applicant's response to SOR; GE 1, 2.

⁸ Tr. at 47, 52-57, 61; GE 1, 2.

⁹ Tr. at 67-68; Applicant's response to SOR; GE 2.

¹⁰ Tr. at 17-29.

¹¹ AE B-E.

¹² AE B.

Policies

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number 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 ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (a) 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;
- (b) 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; and
- (e) 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.

Applicant's parents and sibling are citizens and residents of Country A. The U.S. Department of State described the relationship with Country A as "a deep partnership characterized by mutual respect, mutual interest, shared values, and aspirations for a more peaceful and prosperous future."

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."¹³ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift,

¹³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

sometimes dramatically and unexpectedly. 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. The nature of a nation's government, its relationship with the United States, 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

In this case, the potential conflict of interest and heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion are predominantly created by Applicant's father's status as a retired diplomat and Applicant's mother's position with the IGO as the secretary to the former president of Country A. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Applicant and his father stopped conducting their gemstone business in about 2011. Applicant does not have a substantial business, financial, or property interest in a foreign country. AG ¶ 7(e) is not applicable. SOR ¶ 1.d is concluded for Applicant.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) 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.; and

(b) 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.

Applicant has been in this country for more than 20 years, and he has been a U.S. citizen since 2003. He received his education in the United States. His wife is a native-born U.S. citizen, and their children are U.S. citizens who were born here. He has two siblings who are U.S. permanent residents. Applicant has a successful career. He has held a security clearance without incident since about 2007.

The United States enjoys close relations with Country A, and there is no indication that Country A is involved in espionage against the United States. Notwithstanding Applicant's father's status as a former diplomat and his mother's

employment as a secretary for a former president, I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the Country A government and the interests of the United States. I further find there is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has lived in the United States since 1991, and he became a U.S. citizen in 2003. He attended college and graduate school in the United States, earning a bachelor's degree and a master's degree. His wife is a native-born U.S. citizen who he met in college. Their two children were born in the United States. He has a good job where he is highly regarded. He has held a security clearance without incident since 2007. Applicant is somewhat connected to the Country A government through his parents. However, that connection does not create an unacceptable security risk.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated foreign influence security concerns.

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:	For Applicant
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge