



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



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 14-00360  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: Richard Morris, Esq.

10/29/2014

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline B (foreign influence). Clearance is granted.

**Statement of the Case**

On July 17, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86). On April 17, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline B (foreign influence). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and

it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On May 31, 2014, Applicant responded to the SOR. On July 14, 2014, Department Counsel was ready to proceed on Applicant's case. On July 18, 2014, DOHA assigned Applicant's case to me. On July 30, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for August 26, 2014. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2, and Hearing Exhibit (HE) I, which were received into evidence without objection. (Tr. 13-15.) Applicant called three witnesses, testified, and offered Applicant Exhibits (AE) A through P, which were received into evidence without objection. (Tr. 16.) On September 5, 2014, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In his SOR answer, Applicant admitted SOR ¶¶ 1.a through 1.c with explanations. He denied SOR ¶ 1.d with explanations. Applicant's answers and explanations are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 37-year-old manager, who works in information technology operations and service, and has been employed by a defense contractor since January 2013. Before his current job, he worked for two defense contractors from June 2003 to June 2011 and from June 2011 to January 2013, respectively. Applicant has continuously held a security clearance since 2003. He seeks to retain his security clearance, which is a requirement of his continued employment. (GE 1, SOR answer, Tr. 11, 39-41.)

Applicant graduated from high school in May 1995. He intermittently attended college or took classes from 1995 to 2013 and has earned approximately 128 credit hours, but has not yet been awarded a college degree. The focus of his studies has been in computer-related areas. (GE 1, Tr. 37-39.) Applicant has never married and has no dependents. He has not served in the U.S. armed forces. (GE 1, GE 2, Tr. 41-42.)

### **Foreign Influence**

The basis of foreign influence concerns arise from the friendship, financial support, and frequent contact that Applicant has and continues to have with a 24-year-old male Romanian resident citizen (RRC). In approximately April 2012, Applicant met RRC on line in an internet chat room and established a connection after conversations over mutual interests in Japanese animation and soccer. Their friendship developed over time and they began communicating frequently by telephone, Skype, or e-mail.

They discussed topics such as sports, family life, and other life events. RCC told Applicant of his strong desire to move to the United States and make a better life for himself. At the time Applicant met RCC, RCC was unemployed; however, RCC recently began working for a private company in marketing. Applicant has never met RCC in person. (August 2013 Office of Personnel Management Personal Subject Interview (OPM PSI), SOR ¶ 1.a, SOR answer, Tr. 43, 46, 47, 53-54, 58-59, 62.)

Over the course of their friendship, Applicant provided RCC with approximately \$30,000 to \$35,000 primarily in \$350 monthly increments to help with rent, food, air conditioning, medical expenses, and cell phone. He occasionally sent RCC larger amounts to cover expenses such as \$750 for a cell phone. Applicant did not realize the total amount of money he had sent RCC was so large because he provided “small amounts at a time.” Applicant saw this as an opportunity to help someone, who was less fortunate than he was and viewed his gifts of money as an act of charity. RCC has parents and younger siblings in Romania. Applicant sent the money by Western Union to an address in Romania. (OPM PSI, SOR ¶ 1.b, SOR answer, Tr. 44, 50-56.)

In October 2012, Applicant provided RCC with \$1,600 to defray application fees associated with applying for a U.S. Visa. Applicant explained that this too was an act of charity to help RCC make a better life for himself. RCC subsequently received his Visa to enter the United States, but is waiting to ensure his family “was stable and well taken care of before leaving them to pursue his dreams in the United States.” The SOR alleged that Applicant continues to send RCC \$500 a month to cover his rent and cell phone debt. After Applicant received his SOR, he informed RCC that his providing money was “putting his future at risk.” After discussing the situation with RCC, Applicant no longer sends money to RCC. (OPM PSI, SOR ¶¶ 1.c., 1.d, SOR answer, Tr. 55, 63-66.)

Applicant credibly stated that there was absolutely no way for anyone to influence his loyalty to the United States. (Tr. 46.) Applicant reported his contact with RCC to his Security Officer in July 2013 during his periodic security clearance background investigation. (Tr. 48-50, 53-54.) Applicant has not discussed the specifics of his job with RCC other than he works on computers at a U.S. Government agency. RCC has not made inquiries of Applicant regarding the details of his work nor has he ever asked Applicant to do anything disloyal to the United States. RCC has not done or said anything that would cause Applicant to believe that RCC was interested in pursuing anything other than friendship. (OPM PSI, Tr. 57-58, 60-61, 70.)

Applicant has no financial or property interests in Romania nor has he ever visited Romania. His only connection with Romania is through his internet-based friendship with RCC. Applicant does not have a U.S. passport and has never left the United States apart from an overnight trip to Canada in December 2001. (OPM PSI, SOR answer, Tr. 44.)

Applicant comes from a family of five, grew up on a farm, and was raised with “really strong values.” He is the oldest of three children – he has a younger brother

and sister. Applicant lives near his immediate family and remains in close and frequent contact with them. He also has extended family members with whom he remains in contact. (GE 1, Tr. 37, 68-70.)

Applicant's connections in the United States are substantial and numerous as opposed to having no connections to Romania other than his friendship with RCC. For example, Applicant's U.S. connections consist of: (1) owns a home in the United States valued at \$165,000; (2) has a checking and savings account in the United States; (3) has a 401(k) retirement account valued at \$50,000 to \$70,000; (5) is registered to vote and exercises his right to vote in the United States; and (6) has an estimated net worth of \$250,000. Applicant has no real or personal property in Romania. (Tr. 66-68, 71, AE C, AE D.)

### **Character Evidence**

Three character witnesses testified on Applicant's behalf: (1) a female coworker (CW), who holds a secret security clearance and has worked with Applicant for the past three years, and interacted with him on a daily basis; (2) a female college friend (CF), who has maintained a continuous and close relationship with Applicant for the past 20 years; and (3) Applicant's younger sister. CW and Applicant were co-managers at two different companies doing the same or similar job. CW described Applicant with adjectives such as "very honest," "excellent judgment," "reliable," and "extremely" loyal to the United States. CF corroborated what CW said and added that she trusts Applicant to the point that she made him the beneficiary of her life insurance policies. Applicant's sister also corroborated CW and CF's testimony. She added that she, the Applicant, and her family maintain a close relationship and maintain frequent contact. All three witnesses stated that generosity was part of Applicant's character. (Tr. 12-35.)

Applicant submitted ten character reference letters from a variety of individuals to include his mother, friends, and professional colleagues. The collective sense of these letters describe Applicant as hard working, contributes to the national defense, superb employee, responsive, loyal, generous, and trustworthy. It is clear that Applicant enjoys an excellent reputation, personally and professionally, from a wide range of individuals who enthusiastically support him for a security clearance. (AE H – AE P.) Applicant also submitted evidence that he was certified as a project management professional, had never been arrested, has a good driving record, and has a 728 credit score. (AE A, AE B, AE E, AE F.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s 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 adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. 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 that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. 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 (4<sup>th</sup> 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. 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, [he or she] 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 ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying 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; and

(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.

The Government established its case under Guideline B through Applicant’s admissions and the evidence presented. Applicant has and continues to maintain a friendship with RCC and has provided him approximately \$35,000 over a two-year period.

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 friends or 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 collection operations against the United States, or the country has a significant problem with lawless elements or

terrorists. The Government did not present evidence regarding the relationship between the United States and Romania – positive or negative. Nevertheless, Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist RCC living in Romania.

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).

There is no evidence that intelligence operatives from Romania or terrorists seek or have sought classified or economic information from or through Applicant or from RCC. Nevertheless, his relationship with RCC living in Romania creates a potential conflict of interest. His relationship with RCC is sufficiently close to raise a security concern about his desire to assist him by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant’s contacts with RCC living in Romania. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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.;
- (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;
- (c) 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contact with and maintains a close friendship with RCC and provided him with a substantial amount of money over a two-year period. He is not able to fully meet his burden of showing there is “little likelihood that [his relationship with RCC who is a Romanian citizen and living in Romania] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) fully applies. Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationship with RCC living in Romania. Although there is no evidence that terrorists or criminals have approached or threatened Applicant because of his work for the United States, he is nevertheless potentially vulnerable to threats and coercion made against RCC living in Romania. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has established that “[he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant was born in the United States. He has worked for defense contractors for 11 years. All of Applicant’s assets are in the United States in contrast to having no assets in Romania. He does not have a U.S. passport and has never visited Romania. Through Applicant’s many years of service as a defense contractor, he has repeatedly shown his patriotism, loyalty, and fidelity to the United States. The remaining mitigating conditions are not relevant.

In sum, Applicant’s connections through his friend, RCC, living in Romania are much less significant than his strong connections to the United States. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B.

### **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 the 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are important factors supporting a foreign influence security concern and tending to support revocation of Applicant's security clearance because of Applicant's connections to Romania, and the risk that his friend, RCC, face in the event that terrorists or criminals discover Applicant's relationship to RCC.

The whole-person factors weighing towards granting Applicant's security clearance are more significant. He was born in the United States 37 years ago. He has been employed by defense contractors for 11 years with an established work history. All of Applicant's assets are in the United States as opposed to having no assets in Romania. His employer lauds his duty performance and contributions to mission accomplishment. He is mature and responsible. Applicant has close family ties to his community as opposed to having no family connections in Romania.

Applicant's strong connections to the United States, community, and his employment establish "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." See Discussion of AG ¶ 8(b), *supra*. To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns raised. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors"<sup>1</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

---

<sup>1</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

### **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

### **Decision**

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 eligibility for a security clearance for Applicant. Clearance is granted.

ROBERT J. TUIDER  
Administrative Judge