



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-01521

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro se*

April 23, 2015

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on August 14, 2013. (Government Exhibit 1). On June 6, 2014, the Department of Defense (DOD) pursuant to Executive Order 10865 (as amended); and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992; issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR in writing on June 21, 2014, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on January 5, 2015. A notice of hearing was issued on February 19, 2015, scheduling the hearing for March 19, 2015. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were received without objection. The Applicant presented three exhibits, referred to as Applicant's Exhibits A

through C, which were admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on March 26, 2015, to allow the Applicant to submit additional documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, that was admitted without objection. The transcript of the hearing (Tr.) was received on March 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, testimony, and the exhibits. The Applicant is 31 years of age and married with two biological children, one step-child from a previous marriage, and his wife's cousin who is now their legal ward. He has a Master's degree in Business Administration. He is employed as a Consultant by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

Applicant admitted each of the allegations set forth under this guideline. Applicant was born in Havana City, Cuba in 1983 to an American mother and a Cuban father. He was granted United States citizenship by way of his mother, and considered a United States citizen born abroad. Applicant's mother finished college in the United States, and at some point, for some reason, moved to Cuba to live. As a young child, Applicant was brought to the United States to visit his grandparents periodically. He remembers coming when he was one, four, seven and eleven years old. At the age of fifteen, in 1998, Applicant left Cuba for good and went to live in Spain with his father.

From 1999 to 2001, Applicant attended high school in the United States. He then moved to Alaska and worked in commercial fishing for several months. After September 11, 2001, he joined the United States Marine Corps where he served honorably for eleven years from 2001 to 2012. His decision to join the Marine Corps and serve his country was sparked by his uncle who served in World War II. Applicant's eleven years of military service was a combination of active duty and reserve duty time. During his military career, he received a number of awards and commendations, that include the United States Marine Corps Good Conduct Medal, the Navy and Marine Corps Achievement Medal, and the Navy and Marine Corps Commendation Medal, among many others. (Applicant's Exhibit A.) Throughout his military career Applicant held a security clearance and never received a security violation. Applicant medically retired from the Marine Corps on November 29, 2012.

Applicant excelled in the military graduating from boot camp in the top 1 percent of his class with a Meritorious Promotion. He passionately and with the highest level of

sincerity testified that the Marine Corps gave him a home, a family, and a purpose that he did not get from his biological parents. Among his many accomplishments in the military, Applicant finished his college education, went on multiple deployments, and was commended by a Navy Seal unit outside of his chain of command for exceptional service. (Tr. p. 72.)

Applicant's mother is a native-born American citizen who resides in Cuba, where she has lived since 1994. She is a translator who also teaches English classes. Applicant explained that she suffers from a psychiatric condition brought on by witnessing her child killed in front of her by her then husband at the time. (Tr. p. 64.) She has been mentally unstable, and Applicant severed his relationship with her many years ago. Applicant's father is deceased. (Tr. p. 65.) Applicant has had very little contact with his mother over the years. From 1998 to 2002, he had no contact with her at all. In the last ten years he may have talked with her by telephone as much as 15 or 20 separate times with each call lasting one to two minutes. (Tr. p. 62.) He tries to telephone her on her birthday. He does not know if his mother is still a United States citizen. Applicant last saw his mother in Canada in 2009, and has not seen her since 1998. He provides her with no financial support or gifts of any kind.

Applicant also has a half-brother, on his father's side, who resides in Cuba. Applicant has met him twice. Applicant does not know what type of work his half-brother does or much more about him. Applicant does know that his half-brother and his wife are trying to immigrate to the United States. Applicant has minimal contact with his half-brother in Cuba.

Since moving to the United States, Applicant has never returned to Cuba and has no interest in ever going back. His wife and children have never traveled to Cuba. Applicant's wife is currently a lieutenant in the United States Navy who has progressed from the enlisted ranks through officer ranks. Applicant believes his job as her husband is to do his best to provide her with emotional and financial support during her service to the Navy. Applicant was hired by his current employer in April 2013.

Letters of recommendation from the Applicant's project manager and a colonel in the Marine Corps indicate that Applicant is highly respected for his exemplary work, high moral character and work ethics. He described as meticulous, intelligent and dedicated. He is said to be a man of unquestionable character who displays maturity, endurance, honesty, reliability and trustworthiness. He is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit A.)

I have considered the information provided by the Government on the country of Cuba. Cuba is an authoritarian state that routinely employs repressive methods against internal dissent and monitors and responds to perceived threats to authority. These methods may include physical and electronic surveillance, as well as detention and interrogation of both Cuban citizens and foreign visitors. Human rights conditions in Cuba remain poor, as the Cuban government limits fundamental freedoms, including freedom of expression and peaceful assembly. The United States has just established

diplomatic relationship with Cuba. In recent years, the Cuban government has detained U.S. citizens it suspects of engaging in activities perceived to undermine state security. Official crime statistics are not published by the Cuban Government, however U.S. citizens have reported non-violent theft related crimes such as pickpocketing, purse snatching or taking of unattended or valuable items. There is also evidence that violent crime has increased in Cuba, and is generally associated with assaults committed during a burglary or robbery. Harsh prison conditions, arbitrary arrests, selective prosecution, and denial of fair trials continue. (Government Exhibits 4, 5 and 6.)

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

6. *The Concern.* 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.

### Conditions that could raise a security concern:

7. (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 risks of foreign exploitation, inducement, manipulation, pressure, or coercion;

7. (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.

Conditions that could mitigate security concerns:

8. (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.;

8. (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; and

8. (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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed

in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's situation and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Conditions 7.(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 7.(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 apply. However, Mitigating Conditions 8.(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.; 8.(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; and 8.(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 also apply.*

It is acknowledged that the Applicant's mother and a half-brother are citizens of, and reside in, Cuba. The evidence shows that Applicant has very limited contact with his mother and half-brother. He essentially severed the relationship with his mother at the age of fifteen when he moved to Spain to live with his father. Since then he contacts her on her birthdays, if that. He also has limited contact with his half-brother, who is attempting to immigrate to the United States. Applicant knows very little about his half-brother. Applicant has not maintained contact with him or completed paperwork to sponsor him. Applicant has no continuing ties or contact with any foreigners other than those discussed above. He provides no monetary support or gifts of any kind to his mother, half-brother or any other foreign national.

It is noted that the current political situation in Cuba elevates the cause for concern in this case. In this case, the Applicant has everything to lose and nothing to gain by engaging in any improper foreign contact with Cuba. Everything that he has worked for and everything that he stands for is American. Applicant has resided in the United States for the past sixteen years. He has served our country on the battle field, worked hard to achieve his education, and established his job, his wife, and his family here. His long standing ties and deep relationships are here. As he essentially indicated, his family is and has been the United States Marine Corps, to which he is forever grateful. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that

the person may properly safeguard classified information. The Applicant is an intelligent, well respected, consultant with an excellent work record for the Defense Department. His favorable evidence, including the letters of recommendation from his project manager and a colonel in the Marine Corps who both know him well, in addition to his overall intelligence and integrity gleaned from his own testimony, all demonstrate his trustworthiness. He has presented sufficient evidence in mitigation to demonstrate that he is not a security risk.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subpara. 1.a.: For the Applicant

Subpara. 1.b.: For the Applicant

### **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge



