

KEYWORD: Foreign Influence

DIGEST: Applicant is a 28-year-old naturalized citizen of the United States, working as a customer service representative for a defense contractor. He was born in Bolivia but came to the U.S. when he was nine years old. He served in the U.S. Army reserves. None of Applicant's immediate family members live in Bolivia, but he has grandparents and some other relatives living there. Applicant does not maintain regular contact with his Bolivian relatives. His extensive personal, professional, and economic ties to the United States mitigate possible security concerns. Clearance is granted.

CASENO: 02-29978.h1

DATE: 02/01/2005

DATE: February 1, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29978

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

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SYNOPSIS

Applicant is a 28-year-old naturalized citizen of the United States, working as a customer service representative for a defense contractor. He was born in Bolivia but came to the U.S. when he was nine years old. He served in the U.S. Army reserves. None of Applicant's immediate family members live in Bolivia, but he has grandparents and some other relatives living there. Applicant does not maintain regular contact with his Bolivian relatives. His extensive personal, professional, and economic ties to the United States mitigate possible security concerns. Clearance is granted.

STATEMENT OF THE CASE

On March 25, 2002, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On May 19, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on June 12, 2004. He elected to have a hearing before an administrative judge.

The case was assigned to me on September 7, 2004. With the concurrence of the parties, I conducted the hearing on October 21, 2004. The government introduced four exhibits. Applicant's counsel presented the testimony of two witnesses and Applicant's testimony on his own behalf. DOHA received the transcript (Tr.) on November 1, 2004.

FINDINGS OF FACT

Applicant denied the allegation in ¶ 1.c of the SOR. Answer to SOR, dated June 12, 2004, at 2. Applicant admitted the allegations in ¶¶ 1.a and 1.b of the SOR, and offered mitigating circumstances. *Id.* Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 28 years old. Ex. 1 at 1. He was born in Bolivia. Tr. at 36. Applicant and his family moved to the United States in 1985, when he was nine years old. Tr. at 37. Applicant attended elementary, middle, and high school in the U.S. Tr. at 39.

Applicant and his family visited Bolivia once for about two weeks in 1992, in order to obtain the documentation necessary to apply for citizenship in the United States. Tr. at 42. During that time, he met his relatives in that country. Tr. at 43. Prior to that time, Applicant did not know many of his relatives. *Id.*

Applicant joined the U.S. Army Reserve in 1993 while in high school, and was on active duty for about eight months for his initial training. Tr. at 40. He served in the reserves between July 1993 and July 2001. Ex. 1 at 3, 5. Applicant worked as a personnel assistant for a military intelligence unit. Tr. at 61. He applied for a security clearance but the application was not completed before he left the reserves. Tr. at 61-62. He received an honorable discharge. Tr. at 41.

Applicant worked in a variety of jobs while in college. Ex. 1 at 2-4. This included positions as a bank teller and as a computer technician. *Id.* at 2-3. He was working for a computer technology firm at the Pentagon on September 11, 2001. Tr. at 46.

Applicant attended a university in the United States. He received a Bachelor of Science degree in 2002, with a double major in business management and management information systems. Ex. 1 at 1; Tr. at 39.

Applicant began working for his present employer as an independent contractor for about six months and then became a full-time employee in March 2002. Tr. at 23. Applicant's supervisor and a co-worker believe he is very dependable, honest, and trustworthy. Tr. at 25, 32-33. Applicant received a security clearance when he began his employment. Tr. at 47. He applied for a higher level of clearance in March 2002.

Security investigators interviewed Applicant in May 2002. Tr. at 48; Ex. 2 at 5. Applicant recalled the interview with the investigator. Tr. at 58. The investigator asked Applicant whether he would be concerned if the U.S. moved troops into Bolivia. Tr. at 59. Applicant thought the question was a joke, because Bolivia is not an enemy of the U.S., but replied that he would be concerned. *Id.* Applicant recalled the investigator included in the question something about whether Applicant would tip off his relatives to the U.S. troop movements. Tr. at 61. Applicant denied ever saying that he would tip anyone off. *Id.*

In February 2004, security investigators sent Applicant a formal questionnaire asking for a list of Applicant's relatives in Bolivia. Ex. 2 at 6. Applicant did not know most of his relatives in Bolivia and had to rely on his mother for assistance to prepare the list of names. Tr. at 43.

Applicant's father served in the Bolivian Air Force for 15 years. Tr. at 68. He resigned before the family moved to the U.S., and does not keep in touch with any former military colleagues. *Id.*

Applicant's grandparents on his father's side have passed away. Tr. at 44. His mother's parents are citizens and residents of Bolivia. *Id.* His grandmother visited the United States for about seven months in 2002. Tr. at 45.

Applicant does not stay in contact with his relatives in Bolivia. Tr. at 44. Applicant only felt close to his grandparents and one cousin. Tr. at 57. He had not contacted them since 1992, other than his grandmother's visit to the U.S. *Id.* Applicant has not spoken to his grandmother since she returned to Bolivia in 2002. Tr. at 58. He has no plans to visit Bolivia in the future. Tr. at 67.

Bolivia is a constitutional democracy with separate executive, legislative and judicial branches of government. Ex. 3 at 1. The government generally respects the human rights of its citizens, however there were several instances of excessive violence during episodes of domestic unrest and while enforcing internationally supported cocoa eradication policies. *Id.* The country experiences episodes of domestic violence arising from groups of landless peasants and illegal cocoa growers. *Id.* at 2.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence 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). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR under Guideline B, Foreign Influence.

Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Paragraph E2.A2.1.3.1. defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant has no immediate family who are citizens and residents of Bolivia. Applicant volunteered that he feels close to his grandparents and one cousin who live in Bolivia, even though he does not maintain regular contact with them.

Paragraph 1.c of the SOR alleged that Applicant would be "deeply concerned" about actions against Bolivia that would harm his relatives, and that Applicant would find a way to "tip off" his relatives about U.S. troop movements. Applicant admitted that he would be concerned about something that could harm his relatives in Bolivia. That admission, standing alone, reflects some ties of affection or obligation to his relatives, but does not suggest disloyalty to the United States. Applicant denied ever indicating he would tip off his relatives to U.S. troop movements in Bolivia, and there is no evidence to the contrary.

I find Applicant has close ties of affection or obligation to some of his relatives in Bolivia. These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001). I conclude this potentially disqualifying condition applies.

Similarly, it may be disqualifying where an applicant "shar[es] living quarters with a person . . . if the potential for adverse foreign influence or duress exists." Directive, ¶ E2.A2.1.2.2. Applicant's parents live with him in the home he purchased. His mother stays in regular contact with her parents in Bolivia. Under the circumstances, I find this potentially disqualifying condition applies.

Under ¶ E2.A2.1.2.3 of the Directive, it may be disqualifying where, "[r]elatives . . . are connected with any foreign government." Applicant's father was an officer in the Bolivian Air Force for 15 years, however he has severed all ties to the service and his former colleagues. I find this potentially disqualifying condition does not apply.

Under the Directive, the security concerns arising from possible foreign influence may be mitigated under certain circumstances. These security concerns may not be disqualifying where it is determined that "the immediate family members . . . are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person involved and the United States." Directive, ¶ E2.A2.1.3.1. None of Applicant's relatives are employees or officers of the government. There is no evidence indicating any one of them is an "agent of a foreign power." *See* 50 U.S.C.A. § 1801(b).

In assessing whether an applicant is vulnerable to exploitation through relatives in a foreign country, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Bolivia is a democracy and is not an enemy of the United States. There is no indication that the government of Bolivia, its corporations or citizens engage in espionage activities against the United States, or that any foreign power in Bolivia attempts to pressure or exploit its residents to obtain intelligence information. Under the circumstances, the possibility that a "foreign power" would attempt to exploit or pressure Applicant's relatives in Bolivia to force Applicant to act adversely to the interests of the United States is remote.

It is important to consider the vulnerability to duress of Applicant's relatives in Bolivia. As noted above, Applicant does not know his Bolivian relatives well, but indicated they are not and have never been employees of the government. Applicant provided information showing the occupations of his Bolivian relatives. Ex. 2 at 7. None of the listed occupations suggest the individual is especially vulnerable to pressure or duress. Under these circumstances, Applicant's relatives in Bolivia are not especially vulnerable to adverse influence by a "foreign power."

Another significant factor is Applicant's vulnerability to pressure or duress applied through his ties with his relatives. Applicant is bound by close ties of obligation and affection to his grandparents and one cousin in Bolivia, otherwise he has no real connection to his relatives there. At the same time, he has extensive ties to the United States. Applicant has now lived here all of his adult life, his parents are citizens and residents of the U.S., his professional standing is with U.S. firms, and all his financial interests are in the United States. He served in the U.S. armed forces and worked for defense contractors for several years. He was previously granted access to controlled material without adverse incident. Considering the extent of his ties to the United States, I find Applicant is not vulnerable to pressure or duress through his relatives in Bolivia. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive applies.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant does not maintain regular contact with his grandparents or his cousin in Bolivia, or any of his other relatives there. I conclude this mitigating condition applies.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. Applicant is a mature individual who has spent the majority of his adult life in the United States. The personal, professional, and economic ties that bind him to the United States far outweigh his connections with relatives in Bolivia. I conclude Applicant has mitigated any potential security concerns arising from Applicant's family ties to Bolivia.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

DECISION

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

Michael J. Breslin
Administrative Judge