

KEYWORD: Foreign Influence

DIGEST: Applicant mitigated security concerns over foreign influence concerns concerning his estranged wife's family who are citizens of and reside in Russia. Applicant has had virtually no contact with them and is in the process of divorcing his wife from whom he has been separated for one year. Applicant's assurances that he would contact appropriate U.S. officials if any pressure were attempted is credible given his long history of responsible conduct at work since 1991 and his strong ties to the U.S. Clearance is granted.

CASENO: 03-26852.h1

DATE: 01/30/2006

DATE: January 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26852

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence concerns concerning his estranged wife's family who are citizens of and reside in Russia. Applicant has had virtually no contact with them and is in the process of divorcing his wife from whom he has been separated for one year. Applicant's assurances that he would contact appropriate U.S. officials if any pressure were attempted is credible given his long history of responsible conduct at work since 1991 and his strong ties to the U.S. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) ⁽¹⁾ to the Applicant on February 8, 2005. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant him access to classified information. The SOR alleges specific concerns in paragraph 1 over foreign influence (Guideline B). Applicant replied to the SOR allegations in an Answer notarized on February 24, 2005, where he requested a hearing.

On April 4, 2005, Department Counsel stated the case was ready to proceed. The case was assigned to me on August 1, 2005, and Department Counsel contacted Applicant to find a mutually agreeable date for a hearing. On September 2, 2005, DOHA issued a Notice of Hearing and set this case to be heard on September 21, 2005, in a city near where Applicant lives and works. At the hearing the government presented three exhibits (Exhibits 1-3) which were admitted into evidence without objection. Department Counsel's request that administrative notice (AN) be taken of the information contained in Exhibits I - V was granted as Applicant did not object.

Applicant testified, called one witness, and his five exhibits (Exhibits A-E) were admitted into evidence. The transcript (TR) was received on October 4, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 50 years old, has worked for a defense contractor (Employer #1) in State #1 since September 1991. In June 2003 he completed a Security Clearance Application (Standard Form 86), but has not had access to classified information. (Answer; Exhibit 1; TR 53-55) Applicant has U.S. Department of Justice Employee Possessor Letters of Clearance. (Exhibits C, D; TR 33-35)

Foreign Influence

Applicant previously had a fiancée who was a resident and citizen of the Ukraine whom he met when he went on visits there in 1997-99. After she came to the U.S., she was not happy here and returned in 1999 to the Ukraine. He has had no more contact with her. (Exhibits 1, 2; TR 49-52, 60, 63, 64-66)

In October 200 Applicant married a woman whom he met in the U.S. in 1999, but who is a citizen of Russia. His wife's father is retired from the Russian military; however, he never spoke to her parents in Russia nor had any other contact with them as he neither speaks nor reads Russian. He supported his wife and paid for her schooling. After her son immigrated to the U.S. in June 2002, their relationship deteriorated. Applicant is currently separated from her under a Separation Agreement signed December 2004; after a year of separation he will seek a divorce. Applicant does not own any property in Russian nor has he traveled to Russia. (Exhibits 1, 2, 3; Exhibits A, E; TR 25-28, 40-43, 45-47, 48-49, 55-58, 67-68) Applicant is in a stable financial status. (Exhibit E)

Russia is an active collector of economic intelligence. (AN I-V) However, given Applicant's extensive ties to the U.S., I conclude it is unlikely he would succumb to any pressures that the governments in Russia might exert either on his estranged wife or her relatives. He credibly established that he would not surrender to any kind of pressure. Applicant showed he would choose his loyalty to the United States over loyalty to his estranged wife's family in Russia.

References

Applicant's manager testified that she has known Applicant since July 2004 and that he has a very responsible job. His reputation at the company is for being honest and being a loyal employee. He is well respected and very responsible. She is confident that he would follow security regulations. On a scale of one to five, with five being outstanding, she would rate him a four. She recommended him for a security clearance. (TR 69-75)

A company manager who has known him since 1997 stated that Applicant has "always been an asset to the company and is very reliable and trustworthy." A co-worker who has known him for 11 years recommends him for a security clearance as he finds Applicant "conscientious, honest, and reliable." The president of the company recommended Applicant as "one of the most loyal, honest, forthright, dependable individuals" he knows. The Facility Security Officer recommended Applicant for a security clearance based on his having known him for 30 years and having worked with him for 14 years; he states Applicant is "responsible, ethical, and honest." (Exhibit B)

A company project manager commended Applicant for his excellent performance on a project in 1996. (Exhibit D)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline B - Foreign Influence

E2.A2.1.1. The concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of

the United States or (2) 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

Because of Applicant's estranged wife's family ties to Russia and his former relationship with a woman from the Ukraine, the government⁽²⁾ raised foreign influence concerns under disqualifying conditions (DC): E2.A2.1.2. 1. 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; and E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. Applicant's wife's mother and father are citizens of Russia and reside there; and his estranged wife and her son are citizens of Russia who now lives in the U.S.

While I have seriously considered these security concerns and the documents submitted for administrative notice which raises security concerns over Russia's extensive industrial espionage, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigated⁽³⁾

the Government's security concerns over possible foreign influence as he has essentially cut his ties to his Russian-born wife and her family and is seeking a divorce after a year of legal separation. Further, under E2.A2.1.3 .5., he has no foreign financial interests; all his assets are in the U.S. Also, I have evaluated the relevance of his conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to

include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these factors, I conclude Applicant has overcome foreign influence security concerns. Given his strong ties to the U.S. and his limited contact with the Ukraine, there is little potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) All his financial ties are in the U.S. Clearly, he would put his interests in the U.S. ahead of any loyalty to his estranged wife and her family with Russian citizenship.

Given his long history of responsible conduct with his employer, it is unlikely that he could be exploited by coercive or non-coercive means by the government in Russia in a way that could force Applicant to choose between loyalty to his estranged wife and her family and his loyalty to the United States. Multiple references from his company attested to his excellent reputation at the company where he is well respected and very responsible.

Should any such attempt be made he would immediately contact the appropriate U.S. authorities. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these circumscribed family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.e. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: 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 a security clearance for the Applicant. Clearance is granted.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).
2. "Department Counsel is not required to prove that there is a clear and present danger or imminent threat to classified information before access to classified information is denied or revoked. Nor does Department Counsel have to prove that a particular foreign country is targeting a particular applicant before access to classified information is denied or revoked." See Appeal Board Decision and Reversal Order, ISCR Case No. 02-24267 (May 24, 2005) at 6.
3. E2.A2.1.3 Conditions that could mitigate security concerns include: E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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(s) involved and the United States; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.