



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



In the matter of:)	
)	
)	ISCR Case No. 07-05407
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
Kevin McCants, Esquire

March 31, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 13 August 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E.¹ Applicant answered the SOR 7 September 2007, and requested a hearing. DOHA assigned the case to me 20 December 2007, and I convened a hearing 19 February 2008. DOHA received the transcript (Tr.) 27 February 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

By motion dated 6 December 2007, Department Counsel moved to strike SOR allegation 1.b. Applicant did not object, and I granted the motion (Tr. 6).

Findings of Fact

Applicant admitted that her fiancé is an illegal alien (SOR 1.a.), that they jointly own property in Mexico (SOR 1.d.), and that her prospective in-laws are resident citizens of Mexico, to whom they have sent support money (SOR 1.e.). She denied the remaining SOR allegations. She is a 31-year-old program management specialist employed by a defense contractor since April 2007. She seeks to retain the security clearance she has held since June 2003, when she was employed by a different contractor.

In September 2002, Applicant and her best friend were teaching an English as a second language (ESL) class in a church-sponsored outreach program for the local Hispanic community. Among their students were two brothers originally from Mexico. Unknown to Applicant and her friend, the two brothers were in the U.S. illegally. By the end of 2002, Applicant and her best friend had developed a friendship with the two brothers and their cousin. As they got to know the brothers better still, the relationships moved beyond teacher/pupil. In January 2004, Applicant learned that the brothers were illegal aliens when her mother had a job for one of them and he could not produce the social security number necessary for employment.

Applicant's best friend started dating the other brother, and after a short engagement, they married in December 2004. Before they married, he had to comply with U.S. immigration requirements to remedy his illegal alien status. That procedure required him to return to Mexico, pay a fine, and obtain a waiver of disqualification (for having previously been in the U.S. illegally), as pre-conditions for obtaining his fiancé visa (Tr. 33). He is now a legal permanent resident (LPR) of the U.S., awaiting the day he can apply for citizenship.

Although Applicant learned of her fiancé's illegal status in January 2004 (he had entered the U.S. illegally in January 2001), she started dating him during summer 2004. While they are not yet officially engaged, they decided to get married in fall 2005. They are currently working their way through the immigration requirements to remedy his illegal status, although he remains in the U.S. However, in December 2005, Applicant thought this process might require her to travel to Mexico, so she contacted her company security officer about her prospective travel. The ensuing discussions developed the details of her relationship with her fiancé, and resulted in the company's January 2006 adverse information report (G.E. 1).

In the meantime, a friend had given Applicant an old mobile home, which she relocated to family property owned by her father. She placed it on a part of the property

her father intended to deed to her after the parcel was surveyed. Applicant thought she could rehabilitate the mobile home and use it as a rental property. Applicant, her father, and her fiancé rehabilitated the mobile home, and Applicant took out a loan to dig the well and septic tank required to get an occupancy permit for the mobile home. In October 2005, she bought a used truck to help transport tools and materials to the site. When the work was completed, she rented the mobile home to her fiancé, who pays her \$400 per month. He moved into the mobile home in March 2006. He has lived there since, at various times with a third brother (known by Applicant to be in the U.S. illegally) and several cousins (presumed by Applicant to be in the U.S. illegally)(G.E. 3). She has never asked her fiancé about the legal status of his cousins (Tr. 66). As far as she is concerned, the residence of the third brother and cousins in the mobile home is between her fiancé and them.

In summer 2006, Applicant and her fiancé bought an acre of land in Mexico, near his parents, for \$500. They plan to build a small home there in the next five years, where they can stay when they visit family. They also hope to use the home to house missionaries from their church when they travel to Mexico to work with the poor. In fall 2006, Applicant gave her truck to her prospective father-in-law (and her fiancé paid the shipping costs) because he had greater use for it than she did. He is now able to drive to the nearby town for medical treatment and supplies for the family, and can transport water to the ranch from a nearby river instead of having to transport it by donkey. In addition, she and her fiancé have sent various amounts of money for gifts and other support over the last several years, not exceeding \$2000.

Applicant never considered her fiancé's illegal immigration status as a barrier to her dating him. She never considered any security implications for her due to his status because she did not see him as breaking the law. She had no qualms about renting her mobile home to him as an illegal alien (Tr. 50-55). In her January 2007 sworn statement to a government investigator (G.E. 3), a document she drafted, she was unwilling to name her fiancé's employer for fear of action against the owner for employing an illegal alien. She was similarly unwilling to disclose his actual residence address given his illegal status and risk of immigration action against him. She reiterated those concerns at hearing (Tr. 61).

Applicant's manager since January 2004, who is aware of her foreign national issues, has no concerns over her candor or her continued access to classified information. Her character references (her church pastor who has known her since she was a teenager and her best friend who married her fiancé's brother) consider her faithful and honest.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the

facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

Analysis

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Her romantic involvement with an illegal alien, her providing him and his relatives (also illegal aliens) with shelter, her joint purchase of foreign property, her providing support to his family in Mexico, and her inability to recognize how any of this might raise security concerns, raise serious issues about her judgment and reliability.³

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶ 16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. . . ; (g) association with persons involved in criminal activity.

It was probably not unreasonable for Applicant and her best friend to undertake teaching an ESL class to the local Hispanic community under the auspices of their church, without inquiring of the immigration status of any of the students. In that context, I would be loathe to impute a responsibility for her or her church to pursue that information. However, once her relationship with her fiancé and his brother began to take on a more personal tone, to the point where she became aware of his illegal presence in the U.S., she became responsible for considering how her relationship with her fiancé, and his criminal conduct, might potentially affect her employment or her clearance.

Her joint purchase of foreign property and her financial support to her fiancé's family in Mexico begin to raise foreign influence concerns. Her personal assistance to her fiancé, by helping him find employment and renting him housing knowing his illegal status, raise criminal conduct concerns, whether her conduct is directly criminal or merely aiding and abetting his criminal conduct. The fact that she first started becoming closer friends with her fiancé as early as December 2002, yet did not disclose that relationship to her facility security officer until December 2005—and then only because of her potential foreign travel—raises its own judgment issues. Her willingness to ignore the immigration status of her fiancé as well as the family members he permitted to live with him in the mobile home she rented to him demonstrates further poor judgment. Similarly, her unwillingness to disclose any information about her fiancé that would identify his employer or his living address constitutes poor judgment.

The government successfully articulates three issues of security concern raised by Applicant's conduct cognizable under Guideline E. First, her conduct—and her inability to recognize the security concerns raised by it—constitute poor judgment. Second, she has placed herself in a position where she might be subject to duress or coercion over the possibility her fiancé or his employer might be revealed to immigrations authorities. She might also be subject to duress or coercion for her complicity in her fiancé's criminal conduct. Finally, her unwillingness to disclose complete information about her fiancé or her prospective in-laws in Mexico prevents the government from fully investigating her background. Her explanations of how she does not view her fiancé's conduct as criminal or how she believes that her association with her fiancé and his other illegal-alien family members does not affect her security responsibilities only heightens the security concerns raised by her personal situation. I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Stricken
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant

Subparagraph e: Against Applicant
Subparagraph f: Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge