



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-05777
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

June 4, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the government’s security concerns. Clearance is granted.

On October 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on November 12, 2009, and requested a hearing. The case was assigned to me on March 5, 2009. On March 16, 2009, a Notice of Hearing was issued scheduling the case for April 8, 2009. It was held as scheduled. At the hearing, I received two government exhibits, ten Applicant exhibits, and Applicant’s testimony. Also, at the government’s request, I took administrative notice of the facts set

forth in seven exhibits, marked I through VII, regarding the Republic of Georgia. DOHA received the transcript on April 15, 2009.

Findings of Fact

Applicant is a 58-year-old married man with three children. The oldest are adults, and the youngest is 11 years old. Two previous marriages ended in divorce.

From 1969 to 1972, Applicant served in the U.S. Army. He graduated from the Special Forces Officer Course at age 20 (Exhibit F). In February 1972, he was awarded the Army Commendation Medal (Exhibit G).

After leaving the military, Applicant attended college, earning a bachelor of arts degree in Russian in 1975. He speaks fluent Russian, Spanish, French, and Polish.

Applicant joined the Central Intelligence Agency (CIA) in 1980, serving until 1993. As an "official cover officer," he collected intelligence and recruited spies (Tr 43; Exhibit 2 at 7). Some of these spies were themselves foreign intelligence officers. He spent approximately two years in the 1980s stationed in the former Soviet Union, a "hostile threat environment," (Exhibit 2 at 14, 39) and served as a station chief in another region. The intelligence he collected focused on adversaries' research and development. During this time, he held a security clearance (Tr. 66).

In 1983, the CIA awarded Applicant the Certificate of Exceptional Accomplishment for his work in the former Soviet Union (Tr. 26). This award is typically given posthumously (*Id.*). In 1985, the CIA selected Applicant as an "Exceptional Intelligence Collector" (Exhibit B).

After leaving the CIA, Applicant worked in a variety of consulting jobs. Also, he pursued entrepreneurial endeavors that focused on economic development in the former Soviet Union (Exhibit 2 at 5).

From June 2003 through August 2003, Applicant worked as a consultant for a U.S. company (Item 2 at 12). During this time, he lived in Georgia (Tr. 47). Along with two retired U.S. lieutenant colonels who were also consultants for the company, he taught U.S. Army progression techniques to the Georgian army (Tr. 46). From January 2004 to May 2004, Applicant worked for a company tasked with assisting the Republic of Georgia's Ministry of Defense transition to a "more NATO style" of doing business, and helping the country advance to a market economy (Item 2 at 12).

Since 2007, Applicant has worked for a company that supplies special needs equipment to support special operations within the U.S. armed forces (Tr. 62). The products they market include robotics, tactical communications, and counter-improvised explosive device technology (Tr. 63). The company also markets its products to foreign countries. Applicant is its director of international sales (Tr. 69). Applicant's company has to obtain export licenses for any of its products it markets overseas (Tr. 64).

The Republic of Georgia is seeking to purchase some of the company's products with funding provided by the U.S. European Command (EUCOM - Tr. 65). The Georgian military intends to supply the technology to its special forces that are about to deploy to Afghanistan in support of the NATO coalition (*Id.*).

Applicant met his current wife in August 2003 while living in Georgia. At the time, she was working for the Georgian Ministry of Defense as an information technology specialist (Tr. 45). Applicant and his wife married in June 2005 (Exhibit 1 at 25). She obtained her permanent resident alien status in February 2006, and currently lives in the U.S. with Applicant. She intends to apply for U.S. citizenship as soon as she is eligible (Exhibit 2 at 8). Currently, she works as the manager of a cell phone company (Item 2 at 18). Since getting married, Applicant and his wife have visited Georgia in July 2007 and September 2008.

Applicant's parents-in-law are Georgian citizens and residents. His father-in-law is a mechanical engineer who works at an Italian-owned company that makes wine and fruit juice (Tr. 47). Applicant's mother-in-law is a homemaker who provides daycare for her two grandchildren. She previously taught English in the Georgian educational system (Tr. 47, 57). Applicant's wife talks to them about once per week. Although Applicant and his parents-in-law are friendly, he talks with them only if he coincidentally happens to be present when his wife calls them (Tr. 47, 57). Such conversations average about once per month.

Applicant's sister-in-law is a Georgian citizen and resident. She has a medical degree in addition to a master's degree in business administration (Tr. 48). Currently, she works at a Georgian bank (Tr. 48). Applicant talks with her approximately one to three times per year.

Applicant's wife's uncle is a high-ranking Georgian official who directs a quasi-governmental agency that ensures the security of the prime minister's communications channels (Tr. 50). As part of his duties, he travels with the prime minister on trips abroad (*Id.*). Under the Soviet regime, as part of his mandatory military assignment, he was assigned to a KGB unit (Tr. 49). During Georgia's first independent administration, he worked in the defense ministry, specializing in signals intelligence (Tr. 61).

Applicant talks to his wife's uncle approximately once every two to three months (Tr. 52, 60). He has encouraged the uncle to visit the next time he travels to the U.S. (Tr. 82).

Applicant's brother-in-law is a citizen and resident of Georgia. He is an information technology professional who works part-time for his uncle, the high-ranking Georgian official. Applicant talks to his brother-in-law one to three times per year. Applicant spent time with all of his wife's family during his two trips to Georgia.

The Republic of Georgia is a constitutional republic with a developing economy (Exhibit I at 1). The prime minister received his graduate education in the U.S. (Exhibit V

at 5). Presidential, parliamentary, and municipal elections are largely free and fair (Exhibit II at 4). The government is sincerely committed to reducing corruption (*Id.*). Constitutional amendments ratified in 2006 increased the judiciary's independence (*Id.*). In 2007, legislation was passed banning litigants from communicating with judges during pre-trial and trial (*Id.*).

Georgia's constitution protects religious freedom, freedom of assembly, and freedom of the press (Exhibit 4 at 22). The government neither restricts the Internet, nor limits academic freedom or cultural events (*Id.* at 20).

The World Bank has recognized Georgia as the world's fastest-reforming economy. Georgia was one of the first countries to receive a compact, in the amount of \$295 million, from the U.S. Millennium Challenge Corporation (Exhibit II at 7).¹

The U.S./Georgia relationship is close (*Id.* at 7). A new highway leading from the capital is named after President George W. Bush, and contains his mosaic at the entrance (Answer).

Georgia was one of the earliest and staunchest supporters of the U.S.-led Operation Iraqi Freedom (Exhibit IV at 3). In this conflict, Georgian troops have served under U.S. command (*Id.*).

The mutual support of the U.S. and Georgian militaries predates Operation Iraqi Freedom. In 2002, the U.S. initiated the Georgia Train and Equip Program (GTEP). Through this program, the U.S. trained 200 Georgian officers, in addition to 2000 Georgian soldiers and border guards. The training goals were, among other things, to resist Russian pressure and combat terrorism (*Id.*). The U.S. continues to provide military professionalism training and advisory assistance to the Georgian military (Exhibit II at 7). Georgia has hosted the North Atlantic Treaty Organization's Partnership for Peace military exercises annually since 2001 (Exhibit IV at 3).

Georgia is one of the most unstable parts of the former Soviet Union in terms of the number, intensity, and length of ethnic conflict (Exhibit VIII at 2). In August 2008, ongoing conflict between Georgia and one of its separatist regions escalated into a full-scale military conflict with Russia, a supporter of the separatists (Exhibit V at 11). On August 15, 2008, the countries agreed to a cease-fire. Under the cease-fire, Russia retained control of previously undisputed Georgian territory (*Id.*). Since the 2008 Russian incursion, the U.S. pledged one billion dollars in foreign assistance including \$150 million in loans and guarantees for construction, manufacturing, and affordable mortgages (Exhibit IV at 2).

¹This program offers grant assistance to countries that meet certain requirements for good government and commitment to reform.

Crime remains a serious problem in Georgia (Exhibit III at 1). Georgia's commitment to human rights suffered a setback after the 2008 Russian incursion (Exhibit IV at 1). Since then, many areas have worsened including the use of excessive force by law enforcement officers, torture and mistreatment of detainees, and restrictions on freedom of speech, press, assembly, and political participation (*Id.*).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 explains the foreign influence security concern as follows:

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.

Applicant's wife is a Georgian citizen living with him in the U.S., and his in-laws are citizens and residents of the Republic of Georgia. Although it is a friendly country, it was once part of the Soviet Union, and as such, is still periodically subjected to Russian aggression and intimidation. Moreover, Applicant's relationship with his uncle, a high-ranking Georgian official, creates a security concern notwithstanding Georgia's good relationship with the U.S. AG ¶ 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 AG ¶ 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 the information," apply.

Although Georgia is not a paragon of democracy, it is certainly not a hostile, totalitarian state seeking to project its power worldwide through the brute intimidation or coercion of its citizens abroad. Consequently, Applicant's relationship with his wife does not generate AG ¶ 7(d), "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion."

Applicant only talks with his brother-in-law and sister-in-law, at most, three times per year. AG ¶ 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," applies to these relationships.

There is a presumption that one's relationship with parent in-laws is not casual. Nevertheless, Applicant's father-in-law's innocuous career, together with his mother-in-law's homemaker status, and Georgia's warm relationships with the U.S. are sufficient enough to trigger the application of AG ¶ 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." applies.

Conversely, the security concern generated by Applicant's uncle's expertise in signals intelligence and his current position as the director of the prime minister's network security is significant. However, when balanced against Applicant's experience as a special forces officer, and a CIA officer who served with distinction for 13 years, I conclude that AG ¶ 8(b), ". . . 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," applies.

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.”

The risk of inducement and potential for conflict of interest that Applicant's wife's uncle poses is significant given his position in the Georgian government. These factors must be balanced against the strength of the U.S./Georgian relationship. Since its independence, the U.S. has made tremendous investments in Georgia's economy. U.S. advisors are in Georgia engaged in tasks ranging from border security enhancement to military training. Georgian troops have served under U.S. command in Operation Iraqi Freedom. Although the possibility of Russian aggression and intimidation still exists, Georgia has been undeterred in strengthening its ties to the U.S.

Applicant spent nearly half of his career in the CIA. He spent two of these years in the former Soviet Union, recruiting spies to collect intelligence. This work was inherently dangerous because some of the potential spies in the network he managed were themselves foreign intelligence agents. He could have been subjected to life imprisonment or death if any of these spies were merely feigning interest in working surreptitiously for the U.S. in order to expose his cover. Working in this high-pressure, life-threatening environment, Applicant excelled earning the CIA's Certificate of Exceptional Accomplishment in 1983. After the Soviet Union collapsed, Applicant left the CIA and pursued several private endeavors focused on developing the civil, military, and economic infrastructures of the newly independent countries. Although these projects have not always succeeded, they have always been consistent with U.S. objectives.

I conclude that the strength of the U.S./Georgian relationship, together with Applicant's exceptional and unique career history, outweigh the security risks generated by his Georgian in-laws. Applicant has mitigated the foreign influence security concerns generated by his Georgian in-laws. Clearance is granted.

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 - 1g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge