



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



In the matter of:)	
)	
)	ISCR Case No. 08-06158
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul Delaney, Esquire, Department Counsel
For Applicant: *Pro Se*

May 21, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the foreign influence concerns that arise from his ties to his fiancé, her family and his other friends who are citizens and residents of Ukraine.

On October 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline B (foreign influence) based upon Applicant's relatives who are alleged to be citizens and residents of Iraq. On October 30, 2008, Applicant submitted a response to the SOR. Applicant admitted all SOR allegations and requested a hearing.

The case was assigned to me on December 15, 2008. A notice of hearing was issued on January 5, 2009, scheduling the hearing for February 12, 2009. The hearing was

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

conducted as scheduled. The government submitted 7 documentary exhibits that were marked as Government Exhibits (GE) 1-7. GE 1 and 2 were admitted into the record without objection. Administrative notice was taken of the contents of GE 3-7 without objection.² Department Counsel submitted a document containing written comments on the contents of GE 3-7 for my consideration which was marked as Appellate Exhibit (App. Ex.) I and made part of the record without objection. Applicant testified, called one witness to testify on his behalf, and submitted nine documentary exhibits that were marked as Applicant Exhibits (AE) 1-9 and admitted into the record without objection. The transcript was received on February 26, 2009.

During the course of the hearing, substantial evidence was introduced concerning Applicant's contacts with persons in Ukraine. Department Counsel moved to amend the SOR to allege additional Guideline B concerns based on Applicant's Ukrainian connections. I directed Department Counsel to file a written motion to amend the SOR, serve the motion upon Applicant, and I thereafter continued the hearing to a date to be determined to afford Applicant the opportunity to respond to the new allegations.

Department Counsel filed a Motion to Amend the Statement of Reasons on February 20, 2009. Applicant filed an undated response to the motion to amend in which he admitted all allegations contained therein. A notice of hearing was thereafter issued on March 10, 2009, scheduling the continuation of the hearing for March 18, 2009. The continued hearing was conducted as scheduled. The government submitted four documents at the continued hearing that were marked as GE 8-11 and admitted into the record without objection. Department Counsel submitted a document containing written comments on the contents of GE 8-11 for my consideration which was marked as App. Ex. IV and made part of the record without objection. Applicant testified at the continued hearing but did not submit any additional documentary evidence. The transcript of the continued hearing was received on March 25, 2009.

Procedural Matters

Applicant submitted written objections to various portions of the transcript of the original hearing (App. Ex. II). Department Counsel's and my recollection of the testimony provided at that hearing were consistent with Applicant's objections. Accordingly, the transcript was amended to conform to our collective memory of the testimony. Applicant submitted additional objections to two portions of the continued hearing (App. Ex. V). His recollection of the testimony being consistent with mine, and without objection from Department Counsel, his objections are granted. The continued hearing was held at a different location from the original hearing to accommodate Applicant (App. Ex. III).

² Applicant did not object to administrative notice being taken of the documents, but he did partially dispute the information contained in some of those documents. The matters he disputed have no bearing on my decision in this case.

Findings of Fact

Applicant's admissions to the allegations in the SOR and the motion to amend the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 40-year-old single man who has been employed as a linguist by a defense contractor since May 2007. He was born and raised in Iraq. He resided in Iraq until he deserted from the Iraqi Army in or about 1991. He thereafter resided as a refugee in Saudi Arabia until he was granted political asylum in the United States in August 1993. Applicant became a naturalized United States citizen in December 1999. He has possessed a U.S. passport since January 2000.

Applicant's family is of Kurdish decent. He and his family were persecuted by the Saddam Hussein government throughout his life in Iraq. Applicant was prohibited from pursuing a college education and instead had to attend a technical institute from which he received a diploma in general mechanics in June 1990. Applicant's father was forced to watch as Applicant's brother was executed by the Hussein government in 1986. Applicant was required to serve on the Iraqi border with Saudi Arabia during the first Gulf War where he was threatened by his commanding officer with execution and forced to drive north along a highway on which death was all but imminent.

Applicant and another Iraqi soldier deserted from the Iraqi Army rather than make the drive on the "Highway of Death" as ordered. He then hid out in Iraq for a period of time, briefly engaged in insurgent action against Iraqi forces, and eventually surrendered to United States military forces. He was turned over to Saudi Arabia where he remained in a refugee status until he was granted entry into the United States.

Applicant has worked at a variety of jobs since his entry into the United States, including work as a machine operator, production worker and warehouse worker. He also experienced several periods of unemployment. Applicant began working in or about February 2006 as an interpreter for a defense contractor other than his current employer. He left that employ over a dispute concerning payments he had been promised upon accepting employment. He has rented a room in the same house in the city where he has resided since 1996.

Applicant served with U. S. Army Special Forces commands in Iraq from about February 2006 until April 2007. While serving in Iraq, Applicant was frequently required to perform his duties while receiving hostile fire. A U. S. Army captain reports that Applicant performed his duties in a dedicated and diligent fashion during the course of at least six hostile attacks. Two U. S. Army majors describe Applicant as being honest and a hard worker. They both considered him to be a critical asset to their mission success. His present employer attests to Applicant's professionalism, honesty and commitment. Applicant has volunteered his time and service to training National Guardsmen who are scheduled for deployment to Iraq and/or Afghanistan. Applicant on occasion had access to classified information while serving in Iraq and there is no indication he ever did anything to risk compromise of that information.

Applicant has two sisters who are citizens and residents of Iraq. His youngest sister is 43 years old, a teacher, married, and has three children. Applicant has not spoken with her since he left Iraq in or about 1991. His older sister is 44 years old, a teacher, married, and has four children. Applicant used to contact her by telephone through her neighbor. However, he has not spoken with her since 2004. Applicant's father is alleged to be a citizen and resident of Iraq. Although Applicant admitted this allegation, he testified he doesn't know if his father is still alive. When Applicant last spoke with his sister in 2004, she informed him that their father was gravely ill as a result of him having suffered a stroke. Applicant attempted to speak with his father over the telephone at that time but his father was unable to respond. Applicant sent about \$1,500 to his father on four occasions, the last time being in either 1998 or 1999.

Applicant made no effort to contact his father or sisters while he was serving with the U. S. Army in Iraq because of concern for their safety if he did try to contact them. While he still professes familial concern and affection for his sisters and father, he has no plans to visit or contact them in the future unless and until the political climate improves to a point where such visit and/or other contact would not jeopardize their safety.

Applicant began searching for a wife outside the United States in or about 2002. He first traveled to Jordan on such a quest in 2002. Since that time, his focus has been on Ukrainian women because of his preference for blond women who are apparently prevalent in that country and to his liking. He has engaged the services of marriage agencies and has corresponded through internet sites in an effort to find a Ukrainian woman to marry.

Applicant met one Ukrainian woman while she was in the United States who has since returned to Ukraine. They are not presently romantically involved, but he remains friends with her and has visited with her during some of his travels to Ukraine. Applicant met another Ukrainian woman while he was in Ukraine and eventually became involved in a romantic relationship with her. Although they are no longer romantically involved, they remain friends and Applicant has visited with her while on trips to Ukraine. Applicant has also used the services of Ukrainian prostitutes during his visits in that country. He asserts he has only partaken of the prostitutes in a very professional manner and that such conduct is fully acceptable to men from his heritage.

Applicant met yet another Ukrainian woman over the internet in or about August 2008. He traveled to Ukraine and spent three weeks there to meet with her in December 2008. They stayed for part of the trip with her parents. They also traveled to the United Arab Emirates for several days during this trip. During this trip, they agreed to marry. In January 2009, Applicant applied for a fiancé visa to allow her to immigrate to the United States. He visited with her again in Ukraine for two weeks in February 2009. Applicant anticipates she will be permitted entry into the United States in or about August 2009. They intend to marry as soon as she enters the United States.

Applicant's fiancé is 24 years old. She is an only child and has resided with her parents her entire life. She completed a five-year course of study in psychology in Ukraine, but has been studying cosmetology at Applicant's expense to provide her with job skills that will make her more employable once she enters the United States. Applicant's fiancé has been a student and has never held a job.

In addition to her parents, Applicant's fiancé has two grandmothers and a number of friends who are citizens and residents of Ukraine. Applicant estimates her father is in his mid-50s and her mother is in her late 40s. Both previously were employed as civil engineers at a nuclear power plant. Applicant has informed his fiancé and the other Ukrainian women he was romantically involved with that he works as a linguist. However, he has told his fiancé's parents that he is a car salesman.

Applicant originally indicated he and his fiancé would likely return to Ukraine to have a second wedding ceremony after they were married in the United States. After his most recent visit to Ukraine, he indicated they probably will not have a second ceremony. When questioned about what he would do if his fiancé decided she wanted to return to Ukraine to reside after they were married, Applicant only expressed confidence that she would never express such a choice.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B (foreign influence), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the government is required to present substantial evidence to meet its burden of proof.⁶ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

³ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

him.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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 two sisters and his father, if he is still alive, are citizens and resident of Iraq. Applicant maintained fairly regular but intermittent contact with his older sister and father from the time he fled Iraq until sometime in or about 2004. He sent his father money on four occasions, the last time being in either 1998 or 1999. As to Applicant’s Iraqi relatives, Disqualifying Condition (DC) 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* applies.

Applicant has not had any contact with his Iraqi relatives for about five years. At present, he does not even know if his father is dead or alive. While stationed in Iraq with the U. S. military, Applicant did not avail himself of the opportunity to even attempt to contact his father or sisters. While he has expressed a desire to see them in the future, that desire is contingent upon Iraq obtaining the political stability that would not jeopardize his relatives by such a visit. Mitigating Condition (MC) 8(c): *contact or communication with*

⁸ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation applies.

Applicant has professed his total loyalty to the United States and has demonstrated it by repeatedly serving valiantly with United States military forces while under hostile fire. Three American military officers have vouched for his work ethic, his diligence and his dedication to duty while serving in combat on behalf of the United States. His past combat actions on behalf of the United States completely support his credible assertions that he would resolve any potential conflict that might arise due to his Iraqi relatives in favor of the United States. I am satisfied MC 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 applies.*¹³

Applicant is engaged to a woman who is citizen and resident of Ukraine. Her parents, grandparents and friends are all citizens and residents of Ukraine. He met her over the internet and then visited with her for the first time in Ukraine and United Arab Emirates for three weeks in December 2008. In January 2009, he applied for a fiancé visa for her to enter the United States. She has never before been to the United States, and is first expected by Applicant to come to this country to marry him in or about August 2009. They may or may not return to Ukraine for a wedding ceremony after they are married in the United States.

Additionally, Applicant has become involved in at least one romantic relationship with a Ukrainian woman residing in Ukraine other than his fiancé. He remains friends with her, in addition to another Ukrainian woman he met in the United States who has now moved back to Ukraine, and with other Ukrainian citizens and residents. He has visited and stayed with some of those people in Ukraine on numerous occasions.

DC 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

¹³ The Appeal Board has stated: As a general rule, an applicant's prior history of complying with security procedures and regulations is considered to be of relatively low probative value (citations omitted) However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to national security. (citations omitted) The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report attempts at coercion or exploitation.

When an "Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S., [his behavior] constitute[s] important evidence that Applicant's ties and sense of obligation to the U.S. could be sufficiently strong that he [could] be expected to resolve any conflict of interest in favor of the U.S. Directive ¶ E2.8(b). See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (Applicant's work as an interpreter in Afghanistan occurred "in the context of dangerous, high-risk circumstances in which [he] made a significant contribution to the national security.") ISCR Case No. 06-25928 at 3-4 (App. Bd. Apr 9, 2008)

coercion applies to Applicant's relationship with his fiancé, her parents and other relatives, and his friends who are all citizens and residents of Ukraine. Further, if Applicant does marry his fiancé as planned, an additional security concern will arise under DC 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.*

Unlike Applicant's relationship with his Iraqi relatives, there is no evidence upon which to base a decision of how he might resolve any potential conflict that might arise due to his Ukrainian fiancé, her relatives and friends, and/or his other Ukrainian friends. His relationship with all those persons is current and ongoing and he has traveled to Ukraine frequently to spend time with those persons.

Applicant is self-assured his fiancé will adjust to her relocation to the United States. However, the facts that she is a relatively youthful only child who has lived with her parents her entire life, that she has never been employed but rather has been a student her entire life, that she has never resided outside Ukraine, that she is substantially younger than Applicant, and that their relationship has been of a short duration and is based on no more than five weeks of personal contact does not support his optimism. It is of course impossible to predict what the future will hold for Applicant and his fiancé when and if she relocates to the United States. Additionally, Applicant has minimal significant ties to the United States making it equally impossible to predict what Applicant's response will be if his fiancé decides she cannot adjust to life in the United States and wants to return to Ukraine.

Based on the uncertainties that currently exist due to Applicant's ties to his fiancé, her family, and his friends in Ukraine, MC 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* does apply.

I have also considered the information of which I have taken administrative notice concerning Ukraine.¹⁴ That information discloses that Ukraine is a country that has experienced a degree of political and economic instability since it gained independence following the breakup of the Soviet Union in 1991. It has a continuing complex relationship with Russia as evidenced by Russia cutting off natural gas supplies in January 2006, despite Ukrainian assertions that Russia is a permanent strategic partner of Ukraine.

¹⁴ *Background Note: Ukraine*, U.S. Department of States, dated March 2008. (GE 8)
Country Reports on Human Rights Practices - 2007, Ukraine, U.S. Department of State, dated March 11, 2008. (GE 9)
Country Specific Information, Ukraine, U.S. Department of State, dated October 29, 2008. (GE 10)
Ukraine: Current Issues and U.S. Policy, CRS Report for Congress, updated August 23, 2006. (GE

On the other hand, Ukraine has sought entry into the World Trade Organization, the European Union, and NATO. It has made a substantial contribution to U.N peacekeeping operations. Further, there is nothing to indicate Ukraine has engaged in any espionage efforts, economic or otherwise, since obtaining its independence.

Considering all available information about Ukraine, Applicant is entitled to substantial consideration under MC 8(a): . . . *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.*

Balancing the disqualifying condition that applies and the disqualifying condition that will apply when Applicant marries his fiancé against the consideration due Applicant under MC 8(a), and factoring in Applicant's minimal contacts within the United States, I conclude Applicant has failed to mitigate the security concern that exists due to his relationships with persons in Ukraine. There exists too much uncertainty about what will happen when Applicant's fiancé arrives in the United States, and thereafter, to affirmatively state he has met his burden to present sufficient evidence to refute, extenuate, or mitigate the case against him.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, including Applicant's exceptional service on behalf of the United States in combat situations and the letters of recommendation he submitted in support thereof, the factors listed in ¶6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant failed to mitigate the foreign influence security concern that exists in this case based on his relationships in Ukraine. He has not overcome the case against him nor satisfied his ultimate burden of persuasion. Guideline B is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

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:	AGAINST APPLICANT
Subparagraphs 1.a & b:	For Applicant
Subparagraphs 1.c - 1.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 is denied.

Henry Lazzaro
Administrative Judge

