



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 09-02592  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

October 21, 2010

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 12, 2008. (Government Exhibits 1 and 2.) On September 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E. 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 30, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 27, 2009. This case was assigned to me on October 29, 2009. DOHA issued a notice of hearing on November 5, 2009. I convened the hearing as scheduled on December 2, 2009. The Government offered Government Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and

submitted Applicant Exhibits A through G, which were also admitted without objection. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit H on December 3, 2009, and it was admitted without objection on December 14, 2009. DOHA received the transcript of the hearing on December 8, 2009. The record closed on December 14, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 27 and married. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

### **Guideline E, Personal Conduct**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in conduct which displays questionable judgment, dishonesty, or unwillingness to comply with rules and regulations.

1.a. Applicant did not respond to this allegation in his Answer.

Applicant and his wife have been married since September 6, 2006. (Applicant Exhibit C.)<sup>1</sup> His wife was born in Mexico in 1986, but has been resident in the United States since she was two years old. At the time they were married, she had not obtained permanent residency or citizenship. Applicant knew this fact when they were married. (Transcript at 31-32.)

Applicant and his wife began working to change her legal status in 2006, soon after they were married. Applicant worked with three different people to get his wife's status changed. Two of these people were not helpful. (Transcript at 32-45; Government Exhibit 3 at 3; Applicant Exhibit G.) Applicant submitted a Petition for Alien Relative I-30<sup>2</sup> with US Citizenship and Immigration Services (USCIS), which was received by USCIS on December 13, 2007. (Applicant Exhibit D at 2.) The Petition was approved by USCIS on May 1, 2008. (Applicant Exhibit D at 3.) The approved petition was forwarded by USCIS to the Department of State National Visa Center. This was so the Applicant's wife could apply for a visa with the State Department.

She has applied for a visa. Applicant and his wife have been attempting to transfer the visa interview to a location close to their home because their family includes

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<sup>1</sup>The two Questionnaires submitted by Applicant's employer have the date of their marriage as June 8, 1986. (Government Exhibit 1 at 5, Exhibit 2 at 20.) Applicant's wife was born on May 4, 1986. The dates of birth and marriage are correctly shown on the handwritten version of the Questionnaire the Applicant furnished to his facility security officer in 2007. (Applicant Exhibit H at 8.)

<sup>2</sup>Also known as an Immigrant Petition for Relative, Fiance(e), or Orphan.

young children with medical needs. (Transcript at 33-34.) His wife has had several scheduled dates for her visa interview. (Applicant Exhibit H at 3-4.) The latest notice from the American Consulate in Mexico is dated November 5, 2009. It sets the date for the visa interview as December 11, 2009, in Mexico. (Applicant Exhibit D.)

1.b. Applicant denied this allegation, which alleges that Applicant falsified section 13 of Government Exhibits 1 and 2 by providing a Mexican address as the current address for his wife, when in fact the Applicant's wife resides with him in the United States.

Applicant began working for his current employer in March 2006. In late 2007 Applicant was required to submit an e-QIP in order to obtain a security clearance. Applicant did not have ready access to a computer, so the company facility security officer assisted him in filling out the questionnaire. (Applicant Exhibit F.)

In accordance with company requirements, Applicant prepared a handwritten questionnaire, which he presented to the facility security officer on November 26, 2007. (Applicant Exhibit H at 5-11.) Section 13 of this handwritten questionnaire shows that Applicant provided his American address as the current address for his wife. Applicant further testified that he had further discussions with the facility security officer over the telephone about the form. (Transcript at 45-48, 57-63.) In regards to his wife's address Applicant testified, "I clearly stated to her [facility security officer] that she [wife] resides with me here in the U.S. That's what I told her [facility security officer]." (Transcript at 46.) Applicant adamantly denies falsifying his questionnaire in any way.

It is noted that in Section 13, Applicant declares that his wife does not have a social security number or alien registration number. Additionally, under Section 15, "Citizenship of Your Relatives and Associates," Applicant states, "working on legal status." This is clearly showed on Applicant Exhibit H and Government Exhibits 1 and 2.

1.c. Applicant admitted the factual basis of this allegation. That admission is deemed a finding of fact.

In April 2007 Applicant and his wife were engaged in a domestic dispute that turned physical. As a result of the altercation, Applicant was detained by police on charges of Inflicting Corporal Injury on Spouse and Assault With a Deadly Weapon. He was not charged and was released. Child Protective Services became involved and Applicant was required to attend classes on anger management and parenting. He successfully attended both classes. There has been no recurrence of the marital issues. (Transcript at 51-53; Government Exhibit 3 at 5-7; Applicant Exhibits A and B.)

## **Mitigation**

Applicant submitted documentation showing that he is respected by his former employer. (Government Exhibit 3 at 13.) In addition, he has taken specialized training in his field. (Government Exhibit 3 at 14-15.) Finally, his landlord submitted a letter stating

that Applicant and his wife are, “respectful, friendly, cooperative and helpful.” (Applicant Exhibit E.)

## **Policies**

Security clearance decisions are not made in a vacuum. When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 commonsense 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline E, Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest in any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Regarding all three allegations, the following Disqualifying Conditions are arguably applicable:

16.a. deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

16.c. credible adverse information in several adjudicative 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; and

16.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.

The record shows that the Applicant has worked diligently, legally and consistently since 2007 to convert his wife's status into a lawful one. He has filed the

requisite forms with USCIS and the State Department, had his petition approved and, as of the time the record closed, an appointment had been made for his wife to have a visa interview with the State Department. None of the specific Mitigating Conditions apply to this allegation. However, I find that this conduct does not show questionable judgment, untrustworthiness, unreliability, lack of candor, an unwillingness to comply with rules or regulations, or any other characteristics indicating he may not safeguard protected information. Subparagraph 1.a. is found for the Applicant.

With regards to his questionnaire, the evidence also shows that he has behaved in a fashion that is legal, truthful and aboveboard. Applicant's hand-written application shows that his wife is living with him, and that she does not have a social security number or alien registration number. The final, electronic, version of the questionnaire was prepared by the facility security officer, after telephone discussion with the Applicant. It is clear that during this time the wrong address was given for the current location of the wife. However, it is also clear that Applicant went out of his way to provide accurate information about his wife, including his stating he was "working on legal status" concerning his wife. The evidence does not support a finding that the Applicant intentionally falsified his Questionnaire. Rather, it appears that there was a breakdown in communication between the Applicant and his facility security officer.<sup>3</sup> Subparagraph 1.b. is found for the Applicant.

Finally, the Applicant and his wife, in 2007, two years before the record closed, engaged in a single incident of spousal conflict. He was not arrested or charged for this incident. Rather, he fulfilled all the requirements of the Child Protective Services department. There has been no recurrence of the conduct and, by all indications, it will not recur in the future. Mitigating Condition 17.c. applies, "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment."

### **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 relevant circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. 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

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<sup>3</sup>One possibility, merely for the sake of illustration, is that the facility security officer had problems validating the e-QIP, since the wife did not have a social security number or alien registration number to match an American address.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. I specifically find that the Applicant has mitigated the Government's security concerns under the whole-person concept, independently of Guideline E.

Applicant has worked hard to change his wife's immigration status. The process was begun before he had a job which required a security clearance. The way he filled out his questionnaire is consistent with his desire to fully explain his wife's situation. He has been truthful and forthcoming at all stages of the process. The single incident of alleged spousal abuse was unique in nature and will not be repeated. I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his alleged Personal Conduct. On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E: FOR APPLICANT

Subparagraphs 1.a. through 1.c.: For Applicant

## **Conclusion**

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

WILFORD H. ROSS  
Administrative Judge