



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



In the matter of:)	
)	
)	ISCR Case No. 10-01279
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: William O’Neil, Esquire, Department Counsel

For Applicant: *Pro se*

December 14, 2010

Decision

O’BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on July 26, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant’s request for a security clearance.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On September 7, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).² Applicant submitted an Answer to the SOR, in which he admitted the nine allegations. He signed his notarized Answer on September 25, 2010. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on October 15, 2010, and the case was assigned to me on October 21, 2010. DOHA issued a Notice of Hearing on October 28, 2010, and I convened the hearing as scheduled on November 18, 2010. Department Counsel offered three exhibits, which were marked and admitted as Government Exhibits (GE) 1 through 3. Applicant testified and offered one exhibit, which I marked and admitted as Applicant Exhibit (AE) A. I granted Applicant's request to hold the record open to submit additional documentation, but he did not submit additional documents. DOHA received the transcript (Tr.) on November 29, 2010.

Procedural Ruling

At the hearing, I amended the SOR to correct the numbering of the allegations. Two allegations were marked "1.d." The first allegation marked "1.d." remains as numbered. The subsequent allegations are re-numbered "1.e." through "1.i."

Department Counsel also requested that I take administrative notice of facts relating to Armenia, set forth in a summary marked as Hearing Exhibit (HE) I, with five attached documents. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 49 years old, was born in Armenia. He earned a college degree in electrical engineering there in 1983. He became a U.S. citizen in 2003. He is a team leader and technical manager, and has worked for the same defense contractor since 1999. He has held a security clearance since 2007 without incident. (GE 1, Tr. 18-19)

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

As a college student in Armenia in the 1980s, Applicant's requirement for military service was waived. Applicant graduated from college in 1983, and married an Armenian citizen in 1984. He worked as a biomedical engineer for a surgical institute from 1983 to 1997. Prior to Armenia's separation from the Soviet Union in 1991, the institute was a government entity; after 1991, it was privately owned. Applicant and his wife had two sons, born in 1985 and 1988. In the late 1990s, the local economy was suffering and Applicant's salary was low. He applied for the U.S. Department of State's annual lottery that awarded green cards to Armenian citizens. Applicant won the lottery and, with his wife and two sons, immigrated to the United States in 1997. Applicant and his wife became U.S. citizens in 2003. His sons, who came to the United States when they were 9 and 12 years old, are also U.S. citizens. They are now 22 and 25 years old. Both have been educated in the United States. One is continuing his education at a local university, and the other is employed and recently married. (GE 1, 3; Tr. 18, 23-26)

Applicant's 84-year-old mother is a citizen-resident of Armenia. She was an electrical engineer, and retired 20 years ago. She worked on a government economic planning committee when the country was a Soviet republic. She receives a pension from the Armenian government. She visited Applicant once in 1999 for about two months. He talks with her every week or two. (GE 3; Tr. 20, 33-35)

Applicant's two sisters are also citizen-residents of Armenia. Sister A is a 59-year-old research chemist with a non-military organization. He does not know about her job, and she does not know about his. She lives with his mother, and he talks with her when he calls his mother. Sister B is a chemist in a privately owned research laboratory. Applicant talks with her two or three times per month. Neither of his sisters knows that he holds a security clearance. (GE 2, 3; Tr. 35-39)

Applicant's in-laws are citizens and residents of Armenia. His mother-in-law and father-in-law are 80 and 82 years old, respectively. His father-in-law was an electrical engineer, and his mother-in-law was an opera house director. He talks with them every two months, when his wife contacts them. Both of Applicant's in-laws worked for government organizations when Armenia was a Soviet republic. They have been retired for about 20 years, and receive pensions from the Armenian government. They visited the United States and stayed with Applicant and his family in 1997, 1998, 2000, and 2005. (GE 2, 3; Tr. 20, 33, 39-40)

Applicant denied the SOR allegations that he currently has an friend who is a citizen-resident of Armenia and employee of the Armenian Department of Foreign Affairs. He had a friend, Mr. K, whom he knew in Armenia. Mr. K worked for the Armenian Department of Foreign Affairs. They used to talk several times per year. When Applicant visited Paris in 2004, he stayed temporarily in Mr. K's Paris apartment. Mr. K was not aware that Applicant held a security clearance. Their last in-person contact occurred in 2004. They used to talk by telephone occasionally, but the friendship has waned, and they have not had contact since 2008. Applicant also had a childhood friend in Armenia, before Applicant moved to the United States in 1997. In

2005, Applicant's friend moved to Canada and became a Canadian citizen. Applicant has weekly telephone contact with him since then, and visits him annually. (GE 2, 3; Tr. 44-47)

Since about 1999, Applicant and his family have attended cultural and holiday events at the Armenian embassy approximately once per year. He never attended official meetings and never went to the embassy without his family. In about 2001, he met the Armenian military attaché to the United States. They spoke at the embassy during annual holiday events. The man is no longer the attaché, and Applicant has no knowledge of his current job. They have had no contact since 2008. In about 2005, while visiting the embassy, Applicant met the Armenian ambassador to the United States. They talked during annual embassy events. The man is no longer the ambassador, and Applicant has not had contact with him since 2008. Neither man was aware of Applicant's job or that he held a security clearance in 2007 and 2008. Applicant characterized both men as acquaintances. (GE 3; Tr. 44-46)

In 2007, Applicant traveled to Armenia for two weeks for pleasure, and also to visit his sick mother. He sends his mother and his in-laws \$300 to \$400 every other month to help with expenses. (GE 3) At the hearing, he testified that he sends his mother and in-laws money occasionally, as holiday gifts. Applicant does not have bank accounts in Armenia. When his father died in 1994, Applicant inherited his apartment, where his mother and sister currently live. Its value has decreased over the past several years from \$50,000 to approximately \$25,000. His mother and sister pay the property taxes, and he receives no income from the apartment. His home in the United States is worth approximately \$500,000. (GE 3; Tr. 22, 40-42)

A principal in the defense contracting company where Applicant works submitted a letter of reference. He has known Applicant for 11 years both professionally and as a friend. He stated that Applicant leads his team with integrity and respect. He is intelligent and mature, and his character is above reproach. He is a well-respected member of the company's management team. He and Applicant co-hosted community service activities for needy families. Applicant also contributes to the company leave-sharing program to help other employees, and works with non-profit organizations in fund-raising events. Applicant's supervisor also testified. He has known Applicant for 11 years. He opined that Applicant is professional and his work meets the highest standards. They have worked together almost weekly on civil, Department of Defense, and government projects, and he has never seen Applicant compromise sensitive information. He considers Applicant an exemplary employee. (AE A Tr. 58-63)

Administrative Notice

I take administrative notice of the following facts.³ Armenia, a constitutional republic, became independent of the Soviet Union in 1991. The United States has a

³ The facts cited derive from Hearing Exhibit I, which includes the following five attachments: *Background Note: Armenia*, U.S. Department of State, October 7, 2009; *Armenia Country-Specific*

sizable Armenian-American population, and the United States and Armenia enjoy good relations.

Armenia professes democratic principles, and the government's aim is to establish a western-style parliamentary democracy. However, several elections between 1999 and 2008 raised issues of questionable practices. Mass demonstrations after the 2008 elections resulted in numerous deaths. The country also has significant human rights issues. Civilian-led security forces have engaged in abuses with impunity. Specifically, political opponents and other citizens have been subject to arbitrary arrest and imprisonment, and the National Security Service and police used intimidation to retaliate against opponents. Problems continue with human trafficking, spousal abuse, and violence against women. Freedom of religion and the press are sometimes curtailed.

The United States recognized Armenia in 1991 and opened an embassy there in 1992. The United States has helped Armenia in its transition to a democracy and open markets. Armenia cooperates with the United States' counterterrorism efforts, although corruption hampers enforcement of laws that would improve the country's counterterrorism capabilities. In discussing Armenia's counterterrorism partnership with the United States, the Department of State has noted that Armenia, "has granted blanket over-flight clearance and ad hoc landing rights to U.S. military aircraft, deployment of a peacekeeping contingent to Iraq, and participation in bilateral assistance programs that strengthened the government's capacity to monitor illicit financial flows and confront trafficking in hazardous substances."⁴ The parliament also approved deployment of a contingent of Armenian troops to Afghanistan. The United States has provided humanitarian, technical, and economic aid, and is the largest aid donor to Armenia.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

Information, U.S. Department of State, May 2010; *2009 Country Reports on Human Rights Practices: Armenia*, U.S. Department of State, March, 2010; *Country Reports on Terrorism 2009*, Chapter 2, Country Reports: Europe and Eurasia Overview, United States Department of State, August 2010; and *Armenia, Azerbaijan and Georgia: Political Developments and Implications for U.S. Interests*, Congressional Research Service, September 2010.

⁴ *Country Reports on Terrorism 2009*, Chapter 2, Country Reports: Europe and Eurasia Overview, at 2/ United States Department of State, August 2010.

⁵ Directive. 6.3.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁶ for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.⁷ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁸

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to foreign influence:

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.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

The relevant disqualifying conditions under AG ¶ 7 are

(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

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has close foreign family ties to his mother and two sisters who live in Armenia. He is in touch with them about three times per month. He visited Armenia in 2007 when his mother was ill. He sends money to them and to his in-laws several times per year. Such ties indicate that a heightened risk of foreign influence exists. Applicant also owns a house in Armenia, where his mother and sister reside. Disqualifying conditions AG ¶ 7(a) and (e) apply.

The foreign influence guideline includes factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 8, especially the following:

(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 United States;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and

could potentially result in the compromise of classified information.⁹ Here, Applicant's family lives in Armenia. The United States and Armenia have good relations, and the United States provides substantial economic and technical aid. It has maintained an embassy in Armenia for more than 18 years. Armenia and the United States are partners in combating terrorism. Armenia planned to deploy troops to aid in Afghanistan. Armenia espouses democratic principles, and the government aims to establish a western-style parliamentary democracy. Applicant has frequent contact with his family by telephone, and sends them funds, indicating his affection and sense of obligation to them. AG ¶ 8(c) cannot be applied. However, given the nature of the country involved, his contacts in Armenia do not represent a risk of foreign influence, as it is unlikely that the government would exploit him or his relatives based on their relationship. AG 8(a) applies.

Applicant has a foreign interest represented by the house he owns in Armenia. However, he receives no income from it, and does not pay the property taxes. He estimates its current value at \$25,000. The value of his home in the United States, which he estimates at \$500,000, far outweighs the value of the house in Armenia. Ownership of this single, low-value property does not represent a basis for coercion. AG ¶ 8(f) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

⁹See ISCR Case No. 03-02382 at 5 (App. Bd. Feb 15, 2006); ISCR Case No. 099-0424 (App. Bd. Feb. 8, 2001).

Foreign family ties raise security concerns because of the potential for exploitation. Here, Applicant's contacts with his mother and sisters in Armenia raise such concerns. However, they do not outweigh his ties to the United States. Applicant, his wife, and his sons have lived here 13 years and are all U.S. citizens. Applicant has provided exemplary contributions to the U.S. government through his work for a federal defense contractor for 11 years, and has held a security clearance since 2007 without incident. His home represents a substantial tie to the United States as well, and its value far exceeds the value of his property in Armenia. He contributes to his community by working with non-profit organizations. Given these strong ties, I conclude that Applicant would resolve any conflict of interest in favor of the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a. – 1. i.	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 continue Applicant's access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge