



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



In the matter of:)
)
) ISCR Case No. 11-00213
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant mitigated the foreign influence concerns raised by her 2002 travel to Cuba and her sporadic contact with a cousin who is a citizen and resident of that country. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 1, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline. DOHA recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant's access to classified information.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on April 19, 2012. The hearing took place as scheduled on June 21, 2012. At hearing, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through C without objection. I received the transcript (Tr.) on May 18, 2012.

Request for Administrative Notice

Without objection from Applicant, I approved Department Counsel's request that I take administrative notice of certain facts about Cuba. The related documents have been included in the record as Hearing Exhibit (HE) 1. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant, 60, is a U.S. citizen by birth. She has never lived outside the United States. Her mother is a naturalized U.S. citizen originally from Cuba. Applicant's parents met and married in the early 1950s when her father was stationed at the U.S. Naval Station at Guantanamo Bay, Cuba. Her father and brother are residents and citizens of the United States. Applicant has work for a federal contractor since 1978. She has held a security clearance, without incident for the past 28 years.²

In 2002, Applicant legally traveled to Cuba with her then 69-year-old mother. According to her supervisor, Applicant's travel to Cuba did not raise any issues with her security clearance or job status. Neither Applicant nor her mother has returned to Cuba since their 2002 trip. Before the trip, Applicant did not have any contact with her Cuban family members. In the years following the trip, Applicant's Cuban relatives would occasionally call her home to share news about the family with her mother. Applicant's mother stopped accepting the phone calls when they became cost prohibitive, effectively ending communication with her family. Applicant surmises that her mother discontinued contact because she could not bear hearing news of Applicant's grandmother's declining health.³

After Applicant's grandmother died in 2008, neither Applicant nor her mother attended the funeral. In 2010, Applicant's cousin, a citizen and resident of Cuba, started sending her e-mails containing information about the family. This year, Applicant has received four messages dealing with the death of her uncle. Applicant responds to the e-mails on her mother's behalf. Aside from these occasional e-mails, Applicant does not maintain independent contact with her Cuban relatives.⁴

² Tr. 21-26; GE 1.

³ Tr. 29, 33-34, 39-41; AE C.

⁴ Tr. 34, 37-38; GE 3.

Cuba⁵

Cuba is a totalitarian state controlled by the Cuban Communist Party. The country has long targeted the United States for espionage activities. Since the 1980s, there have been numerous cases of espionage against the United States sanctioned and supported by the Cuban government, including the convictions of U.S. citizens and at least three U.S. government officials. In addition to denying its citizens basic human rights, the Cuban government conducts surveillance of foreign travelers. Americans traveling in Cuba may be subject to surreptitious scrutiny by its government's secret police.

The United States does not have a full diplomatic relationship with Cuba, which has been designated a state sponsor of terrorism. Because of the broad embargo against trade with Cuba, Americans traveling to Cuba must first obtain a license to travel to, from, and within the country. General traveling licenses are granted to persons visiting a close relative (any individual related to a person by blood, marriage, or adoption who is no more than three generations removed from that person or from a common ancestor with that person) who is a national of Cuba. There is no limit on the duration or frequency of such travel. These travelers are permitted to spend money to travel to Cuba and to engage in other transactions directly incident to the purpose of their travel, without the need to obtain a specific license from the Department of the Treasury's Office of Foreign Assets Control (OFAC).

Policies

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 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, administrative judges apply the guidelines 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.

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." In reaching this

⁵ HE 1.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “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 B, Foreign Influence

Under this guideline, “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.”⁶

Under AG ¶ 7, the following disqualifying condition applies:

(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;

The SOR alleges that Applicant traveled to Cuba in 2002 and that she has a cousin who is a resident and citizen of Cuba. Foreign travel alone is not disqualifying under Guideline B. Furthermore, Applicant appears to have traveled to the country legally. However, Applicant’s relationship with a citizen and resident of Cuba may be disqualifying. A close relationship with even one relative living in a foreign country is

⁶ AG ¶ 6.

sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Other considerations relevant in assessing the risk of foreign influence and the likelihood that an applicant's family member may be vulnerable to government coercion or inducement include: the nature of the country's government, its relationship with the United States, and its human rights record. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. Having contacts with a relative in Cuba has the potential to create a heightened risk.

Applicant mitigated the security concerns raised by this relationship. The following mitigating conditions under AG ¶ 8 are applicable:

(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.,

(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; and

(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.

In 2002, Applicant met her Cuban family on a one-time trip to that country. Before the trip, Applicant did not have contact with her extended family members in Cuba. Since the trip, one cousin sporadically sends e-mails to Applicant to update her mother about her surviving family members. Given the casual and infrequent nature of this relationship there is little likelihood that there is a risk for foreign influence or exploitation. There is nothing in the record to indicate that the relationship between Applicant and her cousin, or even her mother's now-distant relationship with her Cuban relatives, could place Applicant in a position of having to choose between U.S. interests and her Cuban family. Applicant's loyalties and longstanding relationships are in the United States, not Cuba. She can be reasonably expected to resolve any conflict of interest in favor of the United States.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has worked as a federal

contractor for more than 30 years, holding a security clearance for 28 years without incident. The evidence supports a finding that Applicant does not have divided loyalties between the United States and Cuba. Based on the evidence, I conclude that Applicant has mitigated the Guideline B concerns raised in this case.

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.-1.b.: For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge