



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



In the matter of:)	
)	
)	ISCR Case No. 11-01934
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

June 22, 2012

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the foreign interest concerns related to his family members associated with the government of Brazil. Eligibility for access to classified information is granted.

Statement of the Case

On January 11, 2012, 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 (EO) 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 after September 1, 2006.

Applicant answered the SOR on February 14, 2012, and requested a hearing before an administrative judge. The case was assigned to me on March 22, 2012. DOHA issued a notice of hearing on March 27, 2012, scheduling the hearing for April

19, 2012. Applicant requested a continuance, and based upon good cause it was granted. On April 2, 2012, an amended notice of hearing was issued, and the hearing was convened as scheduled on April 26, 2012. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf and called three witnesses. The record was left open until May 3, 2012, for receipt of Applicant's exhibits. On May 2, 2012, Applicant offered Exhibits (AE) A through H, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 4, 2012.

Findings of Fact

Applicant is 41 years old. He was born in Brazil and grew up there. He attended school and earned a bachelors, masters, and doctorate degree from a Brazilian university. Applicant was awarded an \$80,000 "scholarship" from the Brazilian government, based on academic achievement, which paid for his masters and doctorate degrees. The terms of the scholarship required him to return to Brazil for two years after completion of his doctorate. During his graduate studies, he lived and studied for two years in England. After he completed his Ph.D., including his study abroad, he returned to Brazil for six months. Applicant testified that after six months, the Brazilian government sent him a letter that released Applicant from any obligation to repay the \$80,000 scholarship. (GE 1; GE 2; Tr. 29-30, 49-53.)

In October 1999 Applicant moved to the United States to do post-doctorate work with a government contractor. He worked for the contractor as a post-doctoral student from October 1999 to October 2001. After he completed his post-doctoral work, he was hired by the contractor as an employee. He has worked for the U.S. Government contractor for the past 13 years. (GE 1; GE 2; Tr. 25-27.)

In 2002 while on a trip home to Brazil, Applicant met his wife. They married in Brazil in September 2003. Applicant's wife is a dual citizen of both Brazil and the United States. They reside together in the United States. They have no children. (GE 1; GE 2; Tr. 44-45.)

In 2005 Applicant received a "green card." Five years later, he was eligible to apply for and receive U.S. citizenship. He did so, and became a U.S. citizen in 2010. In October 2010 he contacted the Brazilian consulate to renounce his Brazilian citizenship. That process was completed in August 2011. At that time, Applicant surrendered his Brazilian passport to his security office. He is now solely an American citizen and uses only a U.S. passport. (GE 1; GE 2; Tr. 26-27.)

Applicant's mother, father, two brothers, sister, parents-in-law, three sisters-in-law, brother-in-law, uncle, and other extended family members are all residents and citizens of Brazil. He travels to Brazil once or twice each year to visit his relatives. He is close to a number of his immediate relatives. (GE 1; GE 2; Tr. 27-28, 31-67.)

Applicant's mother is 69 years old. She is retired from a retail job selling women's accessories. She lives in Brazil and is supported partially by the \$450 Applicant sends

her each month to help her pay for health insurance. Applicant has a joint bank account in Brazil with his mother, but claims the account only contains a few hundred dollars at any given time. His mother is divorced from Applicant's father. Applicant speaks to his mother once per week. He stays with her when he travels to Brazil. She also visits Applicant in the United States. (GE 1; GE 2; Tr. 28, 31-34.)

Applicant's father is 80 years old. He is a retired contract engineer for a private company. Applicant speaks to his father once per week on the phone. He also sees his father in person when he travels to Brazil. (GE 1; GE 2; Tr. 35-36.)

Applicant's oldest brother is 48 years old. He served as an officer in the Brazilian Navy for 16 years. After his military service, he transferred to the civilian sector of the Brazilian government. For the past ten years, he has been serving as a federal judge. Applicant did not know many details about his brother's military service or judgeship, because they do not speak about work. This brother is married. His wife works as a homemaker. Applicant communicates with his brother and sister-in-law once per week and sees them daily when he is in Brazil. (GE 1; GE 2; Tr. 27, 37-40.)

Applicant's other brother is 43 years old. He is employed in a private legal firm where he builds computer systems for the law firm. He is married and has two daughters. His wife is a homemaker. Both of his daughters are currently students. Applicant communicates with his brother and his brother's family once per week and sees them when he visits Brazil. (GE 1; GE 2; Tr. 40-42.)

Applicant's sister is 50 years old. She is employed as a dentist and recently was awarded a contract to work in a military facility. However, she is not a government employee. She is not married and has no children. Applicant communicates with his sister on a weekly basis and sees her when he visits Brazil. (GE 1; GE 2; Tr. 42-44.)

Applicant's mother-in-law and father-in-law are each approximately 75 years old. Applicant's father-in-law worked as an engineer for a private company, but has been retired for approximately 15 years. Applicant's mother-in-law is a retired homemaker. Applicant and his wife sometimes send her parents financial support when they are in need of assistance. Applicant communicates with his in-laws when he visits Brazil. (GE 1; GE 2; Tr. 45-48.)

Applicant's wife has a brother, a sister, two nephews, and one niece. All are citizens and residents of Brazil. His wife's brother is 48 years old and works as a private aircraft pilot. Her sister is 54 years old and is a public middle school teacher. Applicant's niece and nephews are minors and attend school. None of his wife's relatives have served in the Brazilian military or have any affiliation with the Brazilian government. Applicant saw his brother-in-law and sister-in-law briefly on one of his recent trips to Brazil, but otherwise they do not have telephone or email contact. (GE 1; GE 2; Tr. 67-70.)

Applicant also identified two uncles, one aunt, and a friend of his mother's as Brazilian residents with whom he has occasional sporadic in-person contact. He

identified his uncle as a contractor for the Brazilian government at a nuclear plant. He does not keep in contact with this uncle by telephone or email. Applicant saw him on two occasions, for two hours each time, in the last five years when visiting Brazil. This uncle is married. Applicant's aunt has not worked for the Brazilian government or military. He has infrequent contact with her. His other uncle is a medical doctor and has no affiliation with the Brazilian government or military. Applicant has infrequent contact with this uncle. Applicant sees his mother's friend when he visits his mother in Brazil. As far as Applicant is aware, the friend has never served in the Brazilian military or worked for the Brazilian government. (GE 1; GE 2; Tr. 45-46.)

Applicant testified that he has a retirement account in Brazil, as a result of working in Brazil for a year, valued at \$1,000. However, he presented documentation that shows he has a portfolio of investments totaling \$103,404 in the United States. He testified that he intends to remain in the United States, but does not foreclose the option of retiring in Brazil. (AE A; Tr. 54, 58-59.)

He has considered purchasing a home in the United States. He presented a copy of correspondence between himself and a realtor in 2008 regarding his requests to view properties. However, he prudently decided not to make an offer on the property due to the housing price levels at that time. (AE C.)

Applicant is well respected by three colleagues that spoke on his behalf. Each indicated that Applicant is discreet. He was said to have unquestionable honesty, integrity, and judgment. (Tr. 70-79.) His Program Security Manager indicates that since the time Applicant was hired, "there have been no reported incidents of [Applicant] mishandling sensitive material. He has been exposed to [unclassified//for official use only] documents on numerous occasions and this office has never called into question how he handled the information either on paper or through verbal communication." (AE D; AE F.) Applicant's assessments are highly complimentary and show Applicant is a valued employee. (AE E.) He has been awarded four spot awards and three bonus awards for his accomplishments. (AE G.) Applicant presented documentation of his service as a volunteer in his community tutoring program, where he works with area high school students to improve their academic performance. (AE B.)

The Government presented a "Background Note: Brazil," and "Brazil-Country Specific Information," both documents published on the U.S. Department of State website, into evidence (GE 4; GE 5.). It presented no documentation for administrative notice. GE 4 and GE 5 establish that Brazil is a federal republic, with independent executive, judicial, and legislative branches.

The "Background Note: Brazil," states:

The United States and Brazil have traditionally enjoyed friendly, active relations encompassing broad political and economic agendas. The excellent bilateral relationship was foreshadowed when United States was the first country to recognize Brazil's independence in 1822. Since then,

deepening U.S.-Brazil engagement and cooperation are reflected in high-level contacts between the two governments. (GE 3.)

The “Brazil-Country Specific Information,” includes a section entitled, “Threats to Safety and Security.” This section addresses potential labor strikes that occur in urban areas and may cause temporary disruption to public transportation. It cautions U.S. citizens to avoid large gatherings. It also warns of risks of kidnappings to residents and tourists near the Colombian border; cautions U.S. government employees should avoid areas where narcotics traffickers and other criminals have recently engaged in violence; cautions travelers of dangerous rip tides, flooding, mudslides, and blackouts; and warns of high levels of crime in Brazil’s largest cities. (GE 4.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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.

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

The security concern for the Foreign Influence guideline is set out in AG ¶ 6:

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.

The guideline notes nine conditions that could raise security concerns under AG ¶ 7. Four are potentially applicable in this case:

- (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;
- (b) connections to a foreign person, group, government, or country that creates 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 that information;
- (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; 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.

AG ¶¶ 7(a), 7(d), and 7(e) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The Government failed to introduce sufficient information with respect to Brazil to find having relatives in Brazil alone presents a heightened risk. Brazil has good relations with the United States and the threats to safety and security identified in GE 3 and GE 4, do not denote a greater than normal risk. However, a finding of “heightened risk” is not limited to the nature of the foreign country, but also applies to a greater than normal risk inherent in having family members employed by or working for a foreign government. The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered in light of the heightened risk identified. (ISCR Case No. 01-22693 at 7 (App. Bd. Sep.22, 2003).) In the instant case, Applicant’s associations with his brother, sister, and uncle all represent a “heightened risk.” His brother is a federal judge, his sister is a dentist with a military contract, and his uncle works at a government run nuclear power plant. Disqualifying conditions AG ¶ 7(a) and 7(e) apply.

Applicant’s connections to Brazil, and family within Brazil, could potentially create a conflict between Applicant’s obligation to protect sensitive information or technology and his desire to help family in Brazil or Brazil itself. Therefore, disqualifying condition AG ¶ 7(b) also applies.

Applicant lives with his wife, and has a number of in-laws in Brazil. However, none of her immediate family members represent a “heightened risk.” The Government failed to show any of Applicant’s wife’s associations create a greater than normal risk. AG ¶ 7(d) does not apply.

Applicant does not have a substantial financial interest in Brazil. He is not required to repay his scholarship funds. His joint bank account with his mother only has a few hundred dollars in it. AG ¶ 7(e) does not apply.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationship 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 interests in favor of the U.S. interests;

(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

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

Here, the primary concern is Applicant's relationships with his brother, sister, and uncle, and their ties to the Brazilian government. Applicant's other family members and family friend raise concerns through their ties to their family members employed by, or contracting with, Brazil.

Applicant's brother is a federal judge for the independent judiciary in Brazil, his sister is a dentist with a military contract, and their uncle works with a government run nuclear reactor. Applicant's brother has not served in the military for at least ten years. Applicant does not discuss work with this brother. However, they are close. Applicant communicates with his brother on a weekly basis and sees him daily when he is in Brazil. As a member of the independent judiciary branch of the Brazilian government, and as an independent judge, it is unlikely the Applicant 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.

Likewise, Applicant's sister is a dentist. He is close to his sister and communicates with her frequently. She has a contract to provide dental care to military members, but the routine nature of her position is unlikely to place Applicant 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.

Similarly, it is unlikely that Applicant's distant relationship with his uncle could place him in a questionable position. Not only does the nature of all of Applicant's family member's positions within Brazil make potential conflicts unlikely, but also the nature of Brazil itself. Brazilian relations with the United States are friendly and have been since Brazil became a nation. AG ¶ 8(a) is mitigating with respect to all family members and friends. AG ¶ 8(c) applies with respect to Applicant's uncles, aunts, and other extended family members. It is inapplicable to Applicant's immediate family members. He is close to his immediate family members and in frequent communication with them.

AG ¶ 8(b) also applies. Applicant showed that, while he loves his family in Brazil, there is no conflict of interest, because his sense of loyalty or obligation to Brazil is minimal. Admittedly, he has strong ties to his family in Brazil. While he does not completely foreclose the possibility of retiring in Brazil on some distant occasion, he plans to remain in the United States permanently throughout his career. Applicant came to the United States 13 years ago and chose to remain in the United States. He has formally renounced his Brazilian citizenship by actively taking steps through the Brazilian consulate to have it rescinded. Applicant presented evidence of substantial ties to the United States, including his assets in the United States, his community

service, and his efforts to purchase a home in the United States. He can be expected to resolve any conflict of interest in favor of the U.S. interest.

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 relevant 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Independent of my analysis under Guideline B, I find that the whole-person factors also support the finding that Applicant is eligible to be granted a security clearance.

Applicant is 41 years old and is a mature, educated engineer. He has spent the past 13 years in the United States. He is solely a U. S. citizen, after actively having his dual citizenship with Brazil revoked. His act of renunciation is weighted heavily and establishes his loyalty to the United States.

Applicant is known to his colleagues to be discreet, and does not discuss work with his family members. Even though he has family members employed by or contracting with the government of Brazil, the potential for pressure, coercion, exploitation, or duress is low, given his positive attitude about security as attested to by his company's security manager, his candid disclosures to the U.S. Government before and during the hearing, and the nature of the Brazilian government.

Security clearance decisions ultimately come down to judgments as to whether an Applicant is ultimately trustworthy and will protect information with which he is entrusted. This Applicant has demonstrated to those that know him best and to this court that he possesses the good judgment, honesty, integrity, and trustworthiness to possess a security clearance.

Overall, the record evidence overcomes the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his foreign influences.

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.k:	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.

Jennifer I. Goldstein
Administrative Judge