



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-14528
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Christopher Graham, Esquire

09/21/2012

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On March 9, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an April 19, 2012, response to the SOR, Applicant admitted with explanations the two sub-allegations raised under Guideline B and requested a hearing. I was assigned the case on July 16, 2012. The parties agreed to a hearing date of September 7, 2012, and a notice to that effect was issued on August 17, 2012. The hearing was convened as scheduled.

During the hearing, Applicant gave testimony and offered five documents, which were accepted into the record without objection as exhibits (Exs.) A-E. Department Counsel introduced three exhibits, which were accepted without objection as exhibits (Exs.) 1-3. No country-specific materials were offered for purposes of administrative notice. At the conclusion of the hearing, the reference to Applicant's brother-in-law's

position in SOR allegation ¶ 1.b was changed to comport with the evidence. Applicant was given until September 19, 2012, to offer any additional documents for considerations. The transcript (Tr.) was received on September 17, 2012. On September 17, 2012, Applicant forwarded one additional document, which was received and accepted as Ex. F without objection. On September 20, 2012, Applicant submitted one additional document. Absent objection from the Government, that document was accepted as Ex. G and the record was closed. Based upon a thorough review of the exhibits and testimony, security clearance is granted.

Findings of Fact

Applicant is a 43-year-old systems engineer who has worked for his present employer, a defense contractor, for about 18 months. He has owned the company for which he currently works since 1999. Applicant earned a bachelor's degree in electrical engineering from a prestigious college, and subsequently earned a master's degree in software engineering. He and his wife are raising three minor children.

Applicant's brother is a U.S. citizen. He is also a celebrated academician and researcher. Since the early 1980s, he has been employed by or associated with numerous educational institutions, boards, and panels both in the United States and abroad. He has conducted classified research at a U.S. facility on at least one occasion. He has written several books, contributed to multiple texts and publications, and authored nearly 500 articles. He has also written at least seven reports for U.S. Governmental entities. The vast majority of his work has been based in the United States.

In 2002, Applicant's brother served in a consulting capacity with a group that eventually became a research organization under the auspices of a Republic of Singapore ministry. He continued as a paid consultant with that organization while working as a full-time university professor at home in the United States. His consulting was limited to scholarly collaboration, the product of which was published in scholarly journals and literature. It involved no classified work, nor did it involve work related to any military.¹ It was the type of consultancy similar to researchers in his field both in the United States and internationally. In 2009, he accepted a managerial position with the Singapore-based entity and moved with his wife to Singapore, where they rented living quarters and opened a local bank account for the sole purpose of receiving salary disbursements and making local payments. They returned to the United States about three times a year to visit Applicant's mother, their three adult children, and Applicant.

During Applicant's brother's tenure abroad, Applicant's brother "did no work for Singapore's military nor did [he] have access to any Singapore classified information."² Early in 2012, he was offered a prestigious professorship at a top-ranked university in the United States. His wife, who never cared for living in Singapore, rushed back to the

¹ Ex. G (Brother's statement, dated Sep. 20, 2012).

² Ex. F (Brother's statement, dated Sep. 14, 2012).

United States in July or August 2012 to find them a new home. Applicant's brother resigned from the Singapore-based entity. His last day working for it was in September 2012. Before moving back to the United States, he paid his final financial obligations on his Singapore bank account, including utility payments, telecommunications payments, credit card payments, and extraneous bills.

The day following Applicant's brother's last day of work in Singapore, Applicant's brother returned to the United States and began his work for the American university. He is leaving his Singapore bank account open until his final payments have cleared the account. At present, that account has less than \$10,000 in it. The account was previously reported to the U.S. Government in accordance with Report of Foreign Bank and Financial Accounts (FBAR) regulations. Although he is no longer a managerial employee of the Singapore-based entity, Applicant's brother is retaining the consultant status with the entity that he enjoyed previously enjoyed. This tenure and scope of his consultancy remains the same as it was before 2007.

Neither Applicant, his brother, nor Applicant's sister-in-law have any past connections with the Republic of Singapore. Applicant owns no foreign property and does not maintain any foreign accounts or investments. He personally has no ties to foreign governments or entities. Applicant's brother and sister-in-law's three grown children are U.S. residents and citizens. They merely lived in Singapore due to Applicant's brother's tenure at an entity located there. At one time, they owned a car in Singapore which they have since sold. There is no evidence indicating that Applicant's brother has any nexus with Singapore except for his association with the aforementioned research entity. There is no evidence that Applicant's brother maintains social or emotional ties with any of his business contacts in Singapore.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are required 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All available, reliable information about the person, past and present, favorable and unfavorable, must be and were considered 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 my

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

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”³ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁴

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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁷ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

³ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ *Id.*

⁶ *Id.*

⁷ Executive Order 10865 § 7.

Analysis

Guideline B – Foreign Influence

The concern under Guideline B is that 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. Consideration should be given to 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are discussed in the conclusions below. The Government provided no documents or materials related to the Republic of Singapore that suggest it targets U.S. citizens for protected information or is associated with a risk of terrorism. Notice is taken, however, that the Republic of Singapore is commonly considered a strong economic ally of the United States and a partner in the fight against terrorism.

Applicant's brother and sister-in-law, both U.S. citizens, moved to Singapore in 2009, where Applicant's brother worked in a managerial position for a Singapore-sponsored research consortium. Due to Applicant's brother's nexus to a foreign governmental agency, Foreign Influence Disqualifying Conditions AG ¶ 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 exploitation, inducement, manipulation, pressure, or coercion*) and AG ¶ 7(b) (*connections to a foreign person, group, government, or country that create 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*) apply. With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Applicant is understandably close to his brother and sister-in-law. Applicant's brother is a renowned academic. He is a prolific author, researcher, lecturer, and advisor. While much of his career has been in the United States and at U.S.-based organizations, his scientific endeavors have had a naturally international bent in terms of collegial research. To that end, his career has moved from project to project, regardless of where his current assignment or position is based. From 2002 until 2009, he served as a consultant to a Singapore-based scientific organization while working full-time at universities in the United States and elsewhere abroad. From 2009 until September 2012, he accepted an on-site managerial position at the Singapore-based institute. He and his wife have since returned to the United States, where Applicant's brother is currently working for a major U.S. university.

While in Singapore, Applicant's brother's main nexus to that republic was his employment with its research organization, his residence, and a bank account required for receipt of his salary. There, he served in a managerial capacity. He performed no work for the Singapore military, nor did he have access to Singapore classified information. After resigning from that post, but before returning to the United States in September 2012, Applicant's brother paid his Singapore-related debts, relinquished his apartment, and is poised to close his Singapore bank account once his outstanding payments and checks have cleared. He now maintains no apparent or significant nexus with Singapore. He owns no property in Singapore, and there is no evidence he maintains any other investment in that country. He has no family or notably close friends residing in Singapore. He has never expressed a desire to seek citizenship in Singapore; indeed, his wife disliked living there, away from her children. His current consultancy with the Singapore consists solely of the same literary collaboration that he enjoyed before accepting the Singapore-based position as a manager. Given the facts, his profession, and the nature of his work, it appears that any loyalties he may have in Singapore are related to the continued support of collegial research, not to the Singapore government or citizenry.

In contrast, Applicant's brother's family are all residents and citizens of the United States. He is close to his relations. The majority of his career has been based in the United States. His current employment is in the United States, where he and his wife now both reside. Absent evidence Singapore seeks to cull sensitive information from U.S. citizens, Applicant's brother's return to the United States, and the fact that any loyalties that brother may have had to Singapore appear to be limited to the transient research conducted there, are sufficient to raise Foreign Influence Mitigating Conditions AG ¶ 8(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.*); AG ¶ 8(b) (*the individual's sense of loyalty to or obligation to the foreign person, group, government, or country is so minimal, or there is no conflict of interest, either because 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 ¶ 8(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*).

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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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, as well as the whole-person factors. Applicant is a mature man who is well-educated, successful, mature, and highly credible. His family, children, home, investments, company, work, and social life are firmly planted in the United States. There is no suggestion that either he or his conduct pose a security concern.

Applicant's brother has been associated with a foreign research organization connected to the Republic of Singapore for a decade. Although he has been connected with other foreign-based entities during his career, this particular post seems to have raised security concerns because, at the time of the SOR, Applicant's brother and sister-in-law were residing in Singapore while the brother worked at the Singapore entity in a managerial capacity. There, he had no access to Singapore military or classified information, nor is the suggestion he shared any U.S.-based secrets of which he may have been privy. His participation with this entity was strictly toward the establishment of a sound and well-regarded research council. With his resignation from that body and his return to the United States, he untethered himself from any potential of coercion, manipulation, or influence related to his tenure there. His continuing consultancy is strictly performed long-distance with regard to scholarly collaborations that are published in the open scholarly literature; it involves no classified or military work or exchange.

Applicant's brother and sister-in-law are citizens of the United States. Applicant's brother was educated here. He and his wife raised three children, all of whom continue to reside in the United States as U.S. citizens. The vast majority of Applicant's brother's career and research has been in the United States, where they again reside. There is no evidence that his time in Singapore was anything more than a temporary opportunity to participate in the development of a world-class research organization. He did not seek foreign citizenship, nor did he invest in Singapore-based interests. He has no significant financial, business, or property interests remaining there. There is no evidence he endeavored to flourish socially there. There is no evidence he retains any loyalties or interests directly connected with the government or people of Singapore that could be used to manipulate either Applicant or his brother. Indeed, his return to consultancy for the entity is based on his commitment to scholarly research, not to Singapore, its military, or any other foreign interest. Moreover, his return to the United States and his resumption of a professorial career in the United States indicate that his loyalties are foremost to his country and to his research, not to the government of Singapore. Based on these considerations, I find that Applicant mitigated foreign influence security concerns. Clearance is granted.

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

Subparagraph 1.a-1.b: 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. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge