



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



In the matter of:)	
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)	ISCR Case No. 12-00130
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

07/25/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for a security clearance to work in the defense industry. The evidence shows she has mitigated the foreign influence security concern based on her strong and long-standing ties to the United States, which outweigh and overcome her ties to Greece. Accordingly, this case is decided for Applicant.

Statement of the Case

On February 27, 2013, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information.¹

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992,

The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline B for foreign influence.

Applicant timely answered the SOR and requested a hearing. In her three-page answer to the SOR, Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a–1.d; she also provided detailed explanations. The case was assigned to me April 24, 2013. The hearing was held as scheduled on July 2, 2013. Both parties presented documentary evidence, which was admitted as Government Exhibits 1–13 and Applicant Exhibits A–Y. Applicant was called as a witness, testified, and was subject to cross-examination. The transcript (Tr.) was received July 11, 2013.

Findings of Fact

The concern here, as expressed in the SOR, is Applicant's ties to her youngest sister who is a citizen-resident of Greece. There is substantial evidence that Applicant's youngest sister has been involved with and married to two men who are members of the same Greek terrorist organization.² Both men, the current husband and ex-husband, were arrested in 2002 and subsequently convicted. Both men are serving long prison sentences in Greece. Applicant knew nothing about the men's activities until she learned of their arrests in 2002 or 2003, which she then reported to her company's security office. In addition, Applicant's youngest sister was arrested in 2003 or 2004 and prosecuted as an accessory, but was acquitted. Applicant knew nothing about her sister's alleged involvement with terrorist activities.

Applicant is a 54-year-old employee of one of the largest defense contractors. Her educational background includes an associate's degree in natural science, a bachelor's degree in computer science, and a master's degree in technology management.³ She has worked for the same company since 1985, and has a good record of employment.⁴ She has worked in systems integration since 2005. Her previous positions with the company include computer operations/training coordinator, satellite ground controller, software engineer specialist, information systems security officer, software quality engineer specialist, software and database maintenance (acting manager), and software and database specialist/technical advisor.⁵ She has held a security clearance, at the secret level or higher, and worked in responsible positions in a

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 here. 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.

² Exhibits 3–13.

³ Exhibit C.

⁴ Exhibits C, D, E, H–U, W, X, and Y.

⁵ Exhibit C.

secure environment for many years.⁶ Her most recent application for a security clearance is dated February 2011.⁷

Applicant was born in Greece, where she lived with her parents and two younger sisters. She married a U.S. citizen in 1979. She and her husband then lived in a Middle Eastern country for a year or so for her husband's employment. She immigrated to the United States in 1980, and she became a U.S. citizen in 1985. She has lived at the same residence since 1986. She holds a U.S. passport; she has not had a Greek passport since sometime (1980–85) after her immigration. Since then, she traveled to Greece three times (1987, 1996, and 1998) for vacation and family visits. She used her U.S. passport for the trips.

Applicant's husband was a veteran of the U.S. military. They had no children during their marriage. Her husband passed away in 2006.

Applicant's mother and father are now deceased, but she has two younger sisters (known as Summer and Autumn herein) who are citizen-residents of Greece. Her middle sister Summer has never married and has no children. Summer is employed in a secretarial or clerical job by the Greek government. Autumn is unemployed, although she has worked as a proofreader in the past and in her second husband's beekeeping business. Autumn has a 23-year-old son who is a citizen-resident of Greece. In addition to her two sisters and nephew, Applicant has extended family members (e.g., uncle, aunts, and cousins) who are citizen-residents of Greece. She has had essentially no contact with those relatives since departing Greece.

Applicant does not have a close relationship with Summer or Autumn. She described her relationships with her sisters as follows:

We haven't been communicating a lot and sharing our lives much. Even though they're my sisters, my blood, and I care for them, we haven't been very close communicating, so I really don't know much about their [lives].⁸

She described her relationship with Summer as distant, with communications limited to major events or holidays.⁹ Her last communication with Summer was a telephone call during Christmas holidays. She described her relationship with Autumn as "very distant."¹⁰ She has spoken with Autumn infrequently over the years; in 2011, she indicated she spoke with Autumn once a year on average; in 2008, she indicated she

⁶ Exhibit U.

⁷ Exhibit 1.

⁸ Tr. 49–50.

⁹ Tr. 38, 63.

¹⁰ Tr. 63.

spoke with Autumn four times a year on average; and she believes she last spoke with Autumn around the time her husband passed away in 2006.¹¹ She has never exchanged e-mail or letters with Autumn.¹²

The last time Applicant saw her sisters was more than ten years ago during the 1998 trip to Greece. She learned of Autumn's first marriage when she visited Greece in 1987, when she met and spent two to three hours with Autumn and her first husband.¹³ That was the last time she had contact with Autumn's first husband. Applicant learned Autumn had divorced her first husband and was living with another man when she traveled to Greece in 1998.¹⁴ Applicant stayed with Autumn and her then partner during the trip. That was the last time she had contact with Autumn's now second husband. She is unaware of when Autumn married her second husband, but believes it was sometime after his 2002 arrest. She has not returned to Greece since 1998 because she does not want to be there in light of the issues with her sister Autumn.¹⁵

The two men were arrested in 2002.¹⁶ According to a news account, both men were significant or leading figures in the Greek terrorist organization.¹⁷ Applicant learned about the arrests when her sister Summer called and relayed the information. Applicant's reaction to the news was disbelief, describing the news as "awful."¹⁸ She reported the information, which was based on a telephone conversation with Summer, to her company's security office. Since then, she has been interviewed and given voluntary statements on multiple occasions to U.S. law-enforcement or security officials.

Applicant was interviewed by the FBI and the Air Force Office of Special Investigations in the spring of 2003.¹⁹ She reported what she knew, which was based on what her sister Summer had told her. Subsequently, she was interviewed and made voluntary statements to the Defense Security Service in December 2003.²⁰ She was also interviewed and made voluntary statements during official background

¹¹ Tr. 42–43, 65–66.

¹² Tr. 43, 66.

¹³ Tr. 22.

¹⁴ Tr. 50.

¹⁵ Tr. 61.

¹⁶ Exhibit 13.

¹⁷ Exhibit 13.

¹⁸ Tr. 64–65.

¹⁹ Exhibit 9 at 2.

²⁰ Exhibit 9.

investigations in September 2008, April 2011, and October 2012.²¹ She has denied having any knowledge of either man belonging to the Greek terrorist organization before their arrest. Likewise, she has denied having any knowledge of her sister Autumn being an accomplice.

Applicant has provided financial support to her youngest sister Autumn over several years, but the practice ended in December 2010.²² Applicant did so at the request of her sister Summer, who was also providing financial assistance to Autumn who was unemployed with a son at home.²³ Applicant was also moved to give because she feels her sister Autumn is a troubled soul who needs help.²⁴ Applicant gave the money to Summer, who would then give it to Autumn.²⁵ Applicant estimated giving an average of \$5,000 annually, although the amounts varied.²⁶ In September 2008, Applicant reported giving approximately \$8,000 annually.²⁷ In April 2011, Applicant reported giving \$4,000 to \$5,000 annually since 2003, and about \$10,000 in 2010.²⁸ Applicant decided to stop the practice due to the number of questions raised during the background investigations.²⁹ Applicant does not intend to resume the practice in the future.³⁰ Applicant does not provide financial assistance or give money to any other person or organization in Greece.

Applicant's charitable activities include giving money to a church-based organization that supports the poor as well as to charitable entities outside of her church. Her total charitable donations are estimated at about 10% of her annual salary.³¹ She also regularly volunteers in charitable or community activities.³²

²¹ Exhibits 3–8.

²² Tr. 38–40.

²³ Tr. 40.

²⁴ Exhibit 5 at 4.

²⁵ Tr. 40.

²⁶ Tr. 39.

²⁷ Exhibit 7.

²⁸ Exhibit 6.

²⁹ Tr. 40.

³⁰ Tr. 66.

³¹ Tr. 27, 31–32.

³² Tr. 32.

Applicant presented a number of highly favorable letters of recommendation in support of her application for a security clearance.³³ In general, the authors of the letters described Applicant as a generous, loyal, patriotic, and trustworthy person of high integrity. Of note, two authors commented on Applicant's practice of flying the U.S. flag and her observation of flag etiquette.³⁴ Also of note, a manager for 15 years (and a coworker for 27 years) of Applicant stated the following:

[Applicant] exemplifies honesty, integrity, and ethical behavior. She performs her duties with a high level of competence, dependability and profound loyalty to the United States of America. She truly loves America and feels blessed to be an American citizen. She has expressed these feelings openly and sincerely. I have never heard or seen anything anti-American from [Applicant]. [She] is one of the most patriotic Americans I have ever met. I highly recommend that she maintain her ability to work on cleared programs.³⁵

Overall, I found Applicant to be a credible witness. In making this finding, it was evident that her recollection of events, dates, etc. was hampered by the passage of time as well as an effort to put a rather unusual family story in the past. In addition, it was evident that her testimony was based on second-hand knowledge of information she received from her sister Summer. Nevertheless, I found Applicant to be a candid and forthcoming witness.

Law and Policies

It is well-established law that no one has a right to a security clearance.³⁶ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."³⁷ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.³⁸ An

³³ Exhibits A, B, U, and V.

³⁴ Exhibits B and V.

³⁵ Exhibit U.

³⁶ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

³⁷ 484 U.S. at 531.

³⁸ Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁴⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁴¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁴² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁴³ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴⁴ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴⁵

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁴⁶ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

The gravamen of the SOR is whether Applicant's ties to her youngest sister, a citizen-resident of Greece, disqualify her from eligibility for a security clearance. Under

³⁹ Directive, ¶ 3.2.

⁴⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁴¹ Directive, Enclosure 3, ¶ E3.1.14.

⁴² Directive, Enclosure 3, ¶ E3.1.15.

⁴³ Directive, Enclosure 3, ¶ E3.1.15.

⁴⁴ *Egan*, 484 U.S. at 531.

⁴⁵ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁴⁶ Executive Order 10865, § 7.

Guideline B for foreign influence,⁴⁷ the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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.⁴⁸

The guideline contains several disqualifying conditions. Given the evidence here, I have considered the following disqualifying conditions in my analysis:

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 foreign 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 classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The guideline also contains several mitigating conditions. Given the evidence here, I have considered the following mitigating conditions in my analysis:

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 United States; and

AG ¶ 8(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

⁴⁷ AG ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

⁴⁸ AG ¶ 6.

relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant is a longtime employee of a large defense contractor. A naturalized U.S. citizen, she has two sisters who are Greek citizen-residents. She married a U.S. citizen (and veteran of the U.S. military) in 1979, has lived here since 1980, obtained undergraduate and postgraduate degrees here, worked for the same company since 1985, lived at the same address since 1986, and held a security clearance for many years. These circumstances are indicative of stability and reliability. Since leaving Greece more than three decades ago, she has returned just three times. She has not returned since her last trip in 1998 due to the issues with her youngest sister Autumn.

Applicant's sister Autumn is the subject of the SOR, because of her involvement with and marriage to two men who are members of a Greek terrorist organization, both of whom were convicted of terrorism crimes.⁴⁹ Applicant had limited contact with both men. She briefly met Autumn's first husband for a few hours in 1987. She had contact with Autumn's second husband during a vacation to Greece in 1998. Her only contact with the men occurred some years before she knew of their involvement in terrorism. Otherwise, she had no contact with either man. She had no prior knowledge of their memberships or activities in a terrorist organization as established by the several investigations conducted during the period 2003–2012. Indeed, the available evidence shows that this matter and Applicant have been fully investigated and vetted.⁵⁰

Applicant's ties to her sister Autumn are not casual given the sibling relationship, but they are quite distant; their last telephone conversation took place in about 2006. Despite the distant relationship, Applicant was willing to provide financial support to Autumn for a number of years. Applicant did so at the request of her sister Summer, and because Applicant considers Autumn a troubled soul who needs help, a view that is consistent with her charitable activities. Applicant ended that practice in 2010, and she does not intend to resume it.

The security clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has a sister who is a citizen-resident of Greece, who was involved with and married to two men involved with nefarious activities. This circumstance should not be dismissed or overlooked as fanciful or unrealistic, and it justifies close examination or heightened scrutiny in the post-9/11 world. With that said, her relationship with her sister Autumn is distant and obviously strained. Autumn's ties to two men involved in terrorism is a circumstance Applicant had no prior knowledge of until their arrests. And it is a circumstance wholly beyond Applicant's control. Applicant has also distanced herself from Autumn as shown by their last conversation taking place in 2006 and then ending all financial support in 2010.

⁴⁹ See Exhibits 10–13.

⁵⁰ See Exhibits 3–9.

Given the available evidence, I am persuaded that the available evidence is attenuated to the point where it is not sufficient to impute Autumn's involvement with the two men to Applicant. I am also persuaded that Applicant's loyalty to the United States is much stronger than any sibling loyalty she may feel to her sister Autumn. Likewise, I am satisfied that this is not a case of "divided loyalties" as contemplated by the guideline. Instead, I am satisfied that Applicant has both feet firmly planted in the United States and her ties to this country are strong and will become even stronger in the future. Any security risk or concern presented by Applicant's foreign ties is outweighed and overcome by her much stronger ties to the United States.

In addition to the matters discussed above, I gave Applicant substantial credit for voluntarily reporting what she knew about her sister Autumn, cooperating with multiple investigations, and being truthful and complete in responding to questions.⁵¹ Those actions speak volumes about her suitability for a clearance because they are the type of actions we want a clearance holder to take when faced with adverse information.

After weighing the relevant disqualifying and mitigating conditions under Guideline B, and evaluating the evidence in light of the whole-person concept,⁵² I conclude Applicant has mitigated the foreign influence security concern. In reaching this conclusion, I note that the introduction to the AG is instructive when it states, "[w]hen a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working in a secure environment where protecting classified information is paramount."⁵³ The available evidence shows that Applicant's life history is just the opposite. Her life history shows strong evidence of reliability and trustworthiness as well as a demonstrated record of success of working in a secure environment for close to three decades. Accordingly, I conclude she has met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a–1.d:	For Applicant

⁵¹ See AG ¶ 2(e).

⁵² AG ¶ 2(a)(1)–(9).

⁵³ AG ¶ 1.

Conclusion

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

Michael H. Leonard
Administrative Judge