



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 12-06955
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

07/15/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant's clearance.

On 23 July 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline B, Foreign Influence.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 22 October 2015, when Applicant's reply to the FORM was due. Applicant submitted no additional evidence for consideration. DOHA assigned the case to me 1 December 2015.

¹Consisting of the File of Relevant Material (FORM), Items 1-6.

²DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; 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 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 41-year-old software engineer employed by a U.S. defense contractor since September 2007. He was previously employed with another defense contractor between January 2001 and September 2007 (Item 3). This is a periodic reinvestigation of a clearance he has held since March 2003, based on a background investigation completed in July 2002 (Item 5). He has apparently held this clearance without incident since March 2003.

Applicant was born in Ethiopia in July 1974. He grew up there and was educated there through high school, attending a religious school that offered both primary and secondary education. He graduated from high school in 1993 (Item 4).

Applicant immigrated to the U.S. in October 1994 (Item 4). As required by U.S. immigration law, he immigrated to the U.S. on an Ethiopian passport, which has since expired. He became a naturalized U.S. citizen in September 2001. He obtained his U.S. passport in August 2003; it expired in August 2013 (Item 3).

Applicant's parents and his two brothers (one older; one younger) were born in Ethiopia. They are all naturalized U.S. citizens, residing in the U.S.

Applicant traveled on his U.S. passport between 2003 and 2013. In January 2007, he traveled to Ethiopia with his older brother to sightsee and visit relatives. They stayed in a hotel. In May 2007, he traveled to Yemen for a week with his father, to visit his dying (now deceased) uncle. While there, he met the woman he later married. He also met his future mother-in-law. This is the only time he has seen his mother-in-law. Before he traveled to Yemen, he checked the U.S. Department of State travel list to ensure there was no travel warning for Yemen (Item 4).

Finally, in December 2008, he rendezvoused with his parents and his girlfriend (now wife) in Ethiopia. He was there for about a month, and stayed with his aunt. While he was in Ethiopia, he went sightseeing with his girlfriend and announced their engagement.

Applicant's fiancée immigrated to the U.S. on a fiancée visa in October 2009, and they were married in February 2010. They have two children, a son born in October 2010 and a daughter born in April 2014. Applicant's wife became a legal permanent resident of the U.S. in January 2012, a status that does not expire until February 2024 (Answer). However, she became eligible to apply for U.S. citizenship in January 2015. She has since applied, and, as of August 2015, was awaiting her biometrics and interview appointments.

Applicant's 70-year-old mother-in-law is a resident citizen of Yemen. He has meet her once. He speaks to her by telephone annually; his wife speaks to her monthly. The record does not reveal any employment, but Applicant claims that she has no association with the Yemeni government. Her husband is deceased.

Applicant owns the home where his family lives. All his financial interests are in the U.S. His fiscal year (FY) employment evaluations for 2013, 2014, and 2015 are excellent (Item 2).

I have taken notice as requested by the Government in Item 6, particularly the deterioration of the political situation in Yemen, civil war and terrorism-related violence in the country, as well as the Department of State's travel ban to Yemen. However, I also note these pertinent facts about Yemen: The Republic of Yemen was formed in 1990. The country continues to struggle with issues over unification. The United States and Yemen have a strong and growing partnership. Since 2011, the United States has provided Yemen more than \$600 million in assistance. Terrorism and civil unrest are significant problems in Yemen. In January 2015, the Yemeni President and his cabinet reportedly resigned amid the growing violence. In February 2015, the U.S. Embassy in Sana'a suspended its operations and the embassy staff was temporarily relocated due to an uncertain security situation and renewed violence.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.³

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group,

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁴

Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁵ Further, security concerns may arise through 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.⁶ In addition, security concerns may be raised by 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.⁷ Finally, failure to report, where required, association with a foreign national may raise security concerns.⁸

Concerning potential mitigating factors, 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.," largely mitigates the Applicant's circumstances regarding his family members living in Yemen.

While the ongoing risk of terrorist activity by rogue elements in Yemen raises safety issues addressed by U.S. Government travel warnings, there is no evidence that terrorist elements use violence as a means of obtaining protected information. Moreover, there is no evidence that the Yemeni Government or Yemeni companies are active collectors of such information.

Applicant has casual and infrequent contact with his mother-in-law in Yemen—annually by telephone. He met her once, in May 2007. Applicant's wife has monthly telephone contact with her mother, hardly overly solicitous.

⁴AG ¶6.

⁵AG ¶7(a).

⁶AG ¶7(c).

⁷AG ¶7(e).

⁸AG ¶7(f).

Nothing about his mother-in-law's previous or present occupations or activities creates a heightened risk. She has no affiliation with the Yemeni government, or any military, security, or intelligence responsibilities.

Yemen and the United States have a strong and growing partnership. Nevertheless, terrorism and civil unrest remain problems. Still, the U.S. has provided significant assistance to Yemen since 2011 to help address these problems.

Applicant has no foreign assets in Yemen to establish AG ¶7(e). Moreover, any heightened risk of undue foreign influence may also be mitigated under AG ¶ 8(b), where "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." Applicant's sense of loyalty or obligation to his mother-in-law can be viewed as "so minimal" for the same reasons that his contacts can be considered "casual and infrequent," notwithstanding his presumed ties of affection and obligation through his wife. Further, his wife's contacts with her mother are also largely casual and infrequent. Moreover, there is no similar sense of loyalty to a foreign group, government, or country. Finally, Applicant has persuaded me that he can be expected to resolve any conflict of interest in favor of the United States, where he has resided since 1994 and established firm roots. He started his family, has purchased property, has significant assets, and established his home here. His children are U.S. citizens; his siblings are naturalized U.S. citizens. His wife has applied for U.S. citizenship. They have no desire to live in Yemen. Their lives are here, their assets are here, their friends and activities are here.

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a). Applicant has minimal family ties to Yemen that potentially raise concerns of foreign influence. He is not likely to jeopardize himself, his spouse, or the employment that he values. Applicant has demonstrated his reliability and trustworthiness to his supervisors and co-workers.

While the Government established a case for disqualification under Guideline B Applicant mitigated the security concerns. Applicant's wife is a Yemeni citizen with legal permanent resident status until at least February 2024. However, at of August 2015, she has applied for U.S. citizenship and is waiting for the requisite appointments with the Government. Applicant's mother-in-law is a resident citizen of Yemen who has no connection with the Yemeni Government. Applicant's only other connection to Yemen is the six days he spent in Yemen in May 2007 with his father to visit his dying uncle, during which he met his wife. These factors, standing alone, are insufficient to raise any heightened risk of influence. After all, Applicant's cultural connections are to Ethiopia, a country of no security concern alleged by the Government, and favorably vetted in March 2003.

If the terrorism risk and civil disarray in Yemen are sufficient by themselves to establish a heightened risk of influence, then Applicant is at risk of heightened risk of influence. Nevertheless, it is improbable that such influence could be brought to bear on a septuagenarian mother-in-law with no connection to the Yemeni Government. After considering all the facts and circumstances, I find it is clearly consistent with the

national interest to grant Applicant eligibility for a security clearance. Accordingly, I resolve Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs a-b: For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge