



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



In the matter of:

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) ISCR Case No. 12-10011
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Applicant for Security Clearance

Appearances

For Government: Adrienne Strzelczyk, Esquire, Department Counsel
For Applicant: *Pro se*

09/09/2016

Decision

WHITE, David M., Administrative Judge:

Applicant's wife and stepdaughter are Ukrainian citizens, but have resided permanently in the United States since shortly after he applied to renew his clearance. His widowed mother-in-law, a retired municipal worker, still lives in Ukraine that is remote from areas of recent conflict. He fully mitigated resulting security concerns. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on February 13, 2012.¹ On July 27, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence).² The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹Item 2.

²Item 1.

Program (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on August 14, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on December 9, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant received his copy of the FORM on December 16, 2015. He did not object to consideration of the Items in the FORM or to Department Counsel's administrative notice request, and did not submit additional evidence within the time allotted. I received the case assignment on March 29, 2016. Items 1 through 3 in the FORM are admitted into evidence. Item 4 is Department Counsel's request for administrative notice of facts concerning Ukraine. That request is granted, and the facts stated on pages 3 through 5 of Item 4 are incorporated into the following findings of fact by reference.⁵

Findings of Fact

Applicant is a 52-year-old project manager for a defense contractor, where he has worked in support of various overseas DoD operations since 2001. He served honorably on active duty in the Air Force from 1986 to 1991, and in the Air Force Reserve from 1991 to 1996. He held a security clearance while in the Air Force, and during his current employment. He is married, and has a 14-year-old stepdaughter. His wife, stepdaughter, and mother-in-law are citizens of Ukraine.⁶ Applicant denied the factual allegations set forth in the SOR, with explanations.⁷

Applicant worked in support of U.S. forces in Iraq from September 2004 to March 2006. His assigned body guard during that period was a citizen of the United Kingdom, who was married to Applicant's future wife's sister. In early 2006, Applicant's body guard introduced him to his future wife, who was formerly a fashion model and lived in her mother's home in Ukraine while raising her daughter, who was born out of wedlock. In September 2007 Applicant and his wife were married in Ukraine, where she continued to reside so their daughter could pursue her education in the private school

³Item 1.

⁴The Government submitted four Items in support of the SOR allegations.

⁵Department Counsel submitted five documents in support of her request for administrative notice, comprising the relevant portions of official U.S. Government publications that she cited as authority for the noticed facts. Website addresses for complete copies of those documents were also provided.

⁶Item 2 Item 3.

⁷Item 1.

she attended. Applicant remained in daily contact via telephone or internet-based communications with his wife and step-daughter when they were apart, and they exchanged visits in Ukraine or the U.S. whenever possible. He also provided financial support for them.⁸

Applicant's wife was issued a U.S. permanent resident alien "green card" after their marriage, and before he submitted his SF-86 in February 2012. Applicant admitted that, as of the time of his April 2012 interview with an agent from the Office of Personnel Management (OPM), the SOR allegations were accurate. However, during 2013 Applicant's wife and stepdaughter moved from Ukraine to the U.S., and they have since resided permanently with him in their home in a southwestern state.⁹

Applicant's mother-in-law is a Ukrainian citizen and continues to reside there. Applicant said, in his answer to the SOR, that he planned to sponsor her for an immigration visa so that she could move to reside in the United States. He provided no evidence of any progress toward accomplishing that plan, however. His mother-in-law is retired from her former city government human resources job, in which her duties involved hiring and training municipal employees. She speaks little English, so Applicant's communication with her is minimal outside the exchange of pleasantries during Skype communications involving his wife, who is in regular contact with her mother. Applicant never met his wife's father, who is deceased.¹⁰

I took administrative notice of the facts set forth in Department Counsel's request concerning Ukraine, which are incorporated herein by reference as noted above.¹¹ Of particular significance are Ukraine's ongoing conflict with Russia over Crimea and territory in some eastern Ukraine regions, and the absence of any indication that Ukraine engages in espionage, intelligence operations, or human rights abuses toward U.S. citizens or interests. I also note that Applicant's mother-in-law lives in central Ukraine, at a significant distance from the regions experiencing conflicts with pro-Russian interests that are subject to U.S. State Department travel warnings.¹²

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

⁸Item 2; Item 3.

⁹Item 1; Item 2; Item 3.

¹⁰*Id.*

¹¹Item 4 at pages 3 to 5. Applicant did not object to the Administrative Notice request or dispute any facts set forth therein.

¹²Item 2; Item 4.

disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Department Counsel argued that substantial evidence in this case established two of them:¹³

(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

(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.

Applicant's wife and stepdaughter remain citizens of Ukraine, although they now permanently reside with him in the United States. There is no evidence suggesting that they intend to return to Ukraine, other than possibly for short visits to her mother while she still lives there. The evidence does not demonstrate a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion with respect to either of them. Nor do his wife's or stepdaughter's circumstances create a potential conflict of interest that might tempt Applicant to help them in some way by improperly providing sensitive information to any foreign entity. Applicant's widowed mother-in-law continues to reside in Ukraine, in retirement from her municipal human resources employment and at a distance from the eastern regions where instability and conflict with pro-Russian forces are of concern. These facts arguably meet the Government's burden of production by raising security concerns under the aforementioned disqualifying conditions.

¹³Neither the SOR nor Department Counsel asserted security concerns under AG ¶ 7(d), since Applicant's wife and stepdaughter lived in Ukraine, not with him, when he submitted his SF-86 and underwent his OPM interview in 2012. While he was not technically put on notice of such concerns by the SOR or FORM, the relationships involved in this case generate identical and overlapping concerns under AG ¶¶ 7(a), (b), and (d), so separate listing of that DC, or amendment of the SOR, would be superfluous and mitigation is the same.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating security concerns in this case are:

(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.

Applicant does not have a close personal relationship with his mother-in-law, but clearly has close and important relationships with his wife and stepdaughter who, in turn, have loving and dedicated relationships with his wife's mother. Accordingly, his relationships with all three of them are neither casual nor infrequent, and mitigating condition 8(c) does not apply.

Mitigation under AG ¶ 8(a) was established with respect to Applicant's wife and stepdaughter, since they now permanently reside in the United States and have no connection to any Ukrainian government entity. His mother-in-law's position as a retired municipal human resources employee, residing in a region of Ukraine that is remote from the areas where conflict and anti-western agitation occurs, establishes mitigation of his relationship with her under that provision as well. Applicant's minimal sense of obligation to his mother-in-law, contrasted with his dedication and loyalty to the United States, as evidenced by his lifetime of service and overseas support for DoD operations, establish significant mitigation under AG ¶ 8(b) as well.

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 pertinent facts and circumstances surrounding this case. Applicant's conduct is not in question here. He is a mature, talented, and experienced individual, who has served U.S. national security interests for most of his adult life. The potential for pressure, coercion, exploitation, or duress deriving from Applicant's marriage into a Ukrainian family is minimal. His wife and stepdaughter now permanently reside in the United States, and his mother-in-law's circumstances as a retired widow, who lives outside the areas of Ukraine where anti-western forces are present and has no connection to the Ukrainian government, generate little risk.

Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising from foreign influence considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a through 1.c:

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.

DAVID M. WHITE
Administrative Judge