



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



In the matter of:

ISCR Case No. 14-05099

Applicant for Security Clearance

Appearances

For Government: David Hayes, Esq., Department Counsel

For Applicant: *Pro se*

09/28/2016

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, I conclude that Applicant provided adequate information to mitigate security concerns for foreign influence under Guideline B. Eligibility for access to classified information is granted.

Statement of the Case

On September 7, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 2) The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On June 20, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. (Item 1) 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 Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on July 13, 2015. He denied the SOR allegation 1.a that his wife is a citizen of Cuba explaining that she is now a United States citizen. He admitted SOR allegation 1.b that his mother-in-law is a citizen and resident of Cuba. He denied SOR allegation 1.c that he has a friend who is a citizen and resident of Cuba explaining that he does not have friends in Cuba but he does have family in Cuba. He admits SOR allegation 1.d that he traveled to Cuba in 2010 and 2012. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on October 27, 2016. Applicant received a complete file of relevant material (FORM) on February 3, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. I was assigned to case on August 16, 2016.

Findings of Fact

After a thorough review of the case file, I make the following findings of fact.

Applicant was born in the United States and is 34 years old. He is a high school graduate with some college credits. He has been employed by a DOD contractor since July 2008 as a Local Area Network (LAN) administrator. He has held an interim security clearance since 2012. Applicant married in October 2010 and has no children. (Item 2, e-QIP)

The SOR alleges that Applicant's spouse is a citizen of Cuba but a resident of the United States; that his mother-in-law is a citizen and resident of Cuba; that he has a friend that is a citizen and resident of Cuba; and that he traveled to Cuba in 2010 and 2012.

All of the information concerning Applicant's connection to Cuba was provided by Applicant in response to questions on his e-QIP. Applicant's parents were both born in Cuba and immigrated to the United States and became United States citizens. The record does not contain information on when they came to the United States or when they became citizens. Applicant was the fourth of five siblings. The two oldest were born in Cuba in 1969 and 1976. The three youngest, including Applicant, were born in the United States in 1978, 1982 (Applicant), and 1984. His parents must have immigrated to the United States between 1976 and 1978. All members of Applicant's immediate family are now United States citizens. Applicant's wife was born in Cuba in September 1983. There is no information in the case file as to when she came to the United States. She became a United States citizen on August 16, 2014.

Applicant admits that his mother-in-law is a citizen and resident of Cuba. Applicant has monthly telephone contact with her, and personal contact during his visits to Cuba. Applicant listed a foreign contact in Section 19 of the e-QIP. The contact is 62 years old. Applicant lists the date of his first contact as March 2008 and last contact as June 2012. The contact is personal which would indicate the contact is based on family ties, friendship, affection, or common interest. Applicant normally has contact with her

monthly by telephone and when he visits Cuba. Applicant also noted that the foreign contact is not affiliated with a foreign government, military, security, defense industry, or intelligence service. Applicant does not know if the foreign contact is employed. In his response to the SOR, Applicant stated that he does not have any friends in Cuba, just family members. In response to additional questions on the e-QIP, Applicant does not list any other foreign contacts or activities. I conclude from this information that the foreign contact is a relative either from his parents' family or his wife's family.

Applicant admits to traveling to Cuba to visit friends or family for six to ten days in March 2010. He encountered no problems during this visit. In his response to the SOR, he also admits traveling to Cuba to visit relatives in 2012.

Department Counsel requested that I take Administrative Notice of certain facts concerning Cuba. (Item 3) I take Administrative Notice that Cuba became a totalitarian communist state headed by a dictator, Fidel Castro, in 1961. The country is now headed by his brother, Raul Castro. It has a one-party system with the Communist party being the only legal political party. The United States severed diplomatic relations with Cuba and established broad trade embargo against Cuba in 1961.

The Cuban government in the past routinely employed repressive methods against internal dissent, and monitored and forcefully responded to perceived threats to government authority. The government may employ physical and electronic surveillance, as well as detention and interrogation of both Cuban citizens and foreign visitors. In the past, Cuba has targeted the United States for intensive espionage activities. Since the 1980s, there have been numerous reported cases of government-sanctioned and supported espionage against the United States.

Human rights conditions in Cuba have been poor under the Castro dictatorships. The Cuban government limited fundamental freedoms, including freedom of expression and peaceful assembly. Human right abuses were official acts committed at the direction of the government. The Cuban government detained U.S. citizens it suspected of engaging in activities perceived to undermine state security. In the past, the Cuba state security or judicial systems have not carried out their responsibilities according to international norms. The principal human right abuses and limitations include the ability of its citizens to change the government, the use of government threats, and extra-judicial physical assault and intimidation. The government organized violent counter-protests against peaceful dissent and harassment, and used detentions to prevent free expression and peaceful assembly. The government also has placed severe restrictions on freedom of speech and press, restricted internet access, maintained a monopoly on media outlets, limited academic freedom, and places significant restrictions on the ability of religious groups to meet and worship. The government continued to prevent workers from forming independent labor unions or otherwise exercise their labor rights.

On July 20, 2015, the United States re-established diplomatic relations with Cuba. The trade embargo and the restriction on United States citizens visiting Cuba, and Cuban citizens visiting the United States were lifted. It is not known how the

thawing of relationships between the United States and Cuba will change the dynamics between the two governments. However, the changes are positive and should continue to improve the Cuban/United States relationship.

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 must be considered 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B: 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 the 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 consideration 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 ¶ 6)

Applicant's mother-in-law and a family member are citizens and residents of Cuba. Applicant has weekly to monthly telephone contact with them. He sees them on his trips to Cuba. Applicant's contact with family members in Cuba raises the following security concern under Foreign Influence Disqualifying Conditions under 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:
- (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: and
- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in

espionage against the United States, especially in economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant is at risk of coercion, persuasion, or duress. Cuba's past authoritarian government, aggressive targeting of sensitive and protected U.S. technology and military information, and poor human rights record places a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under 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.;

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The mitigating conditions apply. There is a rebuttable presumption that a person has ties of affection for, or obligation to, his immediate family members or the family members of his spouse. Applicant presented information that rebuts this presumption. He has limited contact with his mother-in-law and a family member. His contacts are limited to weekly or monthly telephone conversations and occasional visits to Cuba. Applicant's contact with family members in Cuba is minimal at best, rebutting the presumption that he has ties of affection or obligation to his mother-in-law or another relative. This information negates the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the presence of the family members in Cuba and the intelligence activities of the Cuban government. In balancing all of these factors, I am satisfied that Applicant's family members in Cuba are not in positions that make it likely that Applicant will be placed in a position of having to choose between the interests of the family members and the interests of the United States. Accordingly, Applicant has met his heavy burden to show that his relationships with his family members in the Cuba are not a security concern. Appellant has mitigated security concerns for foreign influence with the Cuba.

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):

(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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

The presence of Applicant's mother-in-law and a relative in Cuba creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion of Applicant by Cuba against the interest of the United States. Applicant does not have close and frequent contact with his relatives in Cuba. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has mitigated foreign influence security concerns based on his family members in the PRC. Eligibility for access to classified information 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:

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| Paragraph 1, Guideline B: | FOR APPLICANT |
| Subparagraphs 1.a - 1.d: | 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.

THOMAS M. CREAN
Administrative Judge