



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



In the matter of:)
)
) ISCR Case No. 14-06234
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/15/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On January 24, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on February 19, 2015, and requested a hearing before an administrative judge.

The case was assigned to me on January 18, 2017. After coordinating with the parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2017, scheduling the hearing for April 5, 2017. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on April 18, 2017.

Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Venezuela. The request was not admitted in evidence but was included in the record as Hearing Exhibit (HE) I. Neither party objected, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that Venezuela has a repressive, authoritarian, anti-American regime with ties to countries that are opposed to the United States. Venezuela maintained a permissive environment that allowed for support of activities that benefitted known terrorist groups. Violent crime, drug trafficking, and human-rights abuses are prevalent.

Findings of Fact

Applicant is a 37-year-old engineer employed by a defense contractor. He worked for another defense contractor from 2003 until he accepted his current position in 2007. He has held a security clearance since he worked for the first company. He has a bachelor's degree and a master's degree. He is married with two children.¹

Applicant's parents are from Venezuela. They were attending college in the United States when Applicant was born, making him a native-born U.S. citizen. His parents returned to Venezuela, and Applicant spent much of his childhood there. He did not like the direction Venezuela was heading, and he moved back to the United States in 2001. He relinquished his Venezuelan passport in 2005, and he has never renewed it.²

Applicant's wife is from Venezuela. They met in the late 1990s. She immigrated to the United States in 2007, and they married in the United States the same year. She became a U.S. citizen in 2010. Their children were born in the United States.³

Applicant's parents are divorced. His father, stepmother, sibling, and half-siblings are U.S. citizens. Applicant's mother and one of his wife's siblings are Venezuelan

¹ Tr. at 21, 24; GE 1, 2.

² Tr. at 38-39; GE 1, 2.

³ Tr. at 22-24, 39; GE 1, 2.

citizens and U.S. permanent residents. His grandmother, parents-in-law, and two of his wife's siblings are Venezuelan citizens and residents.⁴

Applicant's father-in-law and mother-in-law have been separated for years, but have never divorced. His father-in-law lives with and has children with a woman not Applicant's mother-in-law. His father-in-law retired from the Venezuelan military as a senior officer. He worked in a government agency for a period after he retired. Applicant thinks his father-in-law is unemployed but looking for a job. He believes that his father-in-law supported the Venezuelan government, but Applicant does not believe his father-in-law is corrupt because he is not wealthy.⁵

Applicant's wife and her mother are close. Applicant and his wife pay for her mother to periodically visit them in the United States. Applicant's wife is not close to her father or her half-siblings. Applicant believes his wife and her father talk or e-mail about twice a year. Applicant's father-in-law has never visited them in the United States and has never seen their children. Applicant can only remember talking to his father-in-law once since he got married, when his first child was born. They did not talk after the birth of his second child.⁶

Applicant and his wife have not returned to Venezuela since 2009. He does not intend to return to Venezuela to live or even to visit. All of his financial assets are in the United States. Applicant and his wife intend to apply for his wife's mother to immigrate to the United States and then either his wife or his mother-in-law will apply for one of his wife's siblings to immigrate to the United States. Applicant credibly testified that he would report any attempt to use his foreign connections against him.⁷

Applicant submitted letters attesting to his excellent job performance, work ethic, dedication, honesty, dependability, trustworthiness, and integrity.⁸

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

⁴ Tr. at 32-38, 49, 52; Applicant's response to SOR; GE 1, 2.

⁵ Tr. at 25, 28, 42-46; Applicant's response to SOR; GE 1, 2.

⁶ Tr. at 25-28, 31-32, 39-41, 47, 52; GE 1, 2.

⁷ Tr. at 30-32, 35-37, 40-41, 49-50, 55-57; Applicant's response to SOR; GE 1, 2.

⁸ AE A-C.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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(a), 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 the national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse 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).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
- (e) shared 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.

Applicant's father-in-law retired from the Venezuelan military as a senior officer. Venezuela has a repressive, authoritarian, anti-American regime; maintained ties to countries that are less than friendly to the United States; and created a permissive environment that allowed for support of activities that benefitted known terrorist groups. Violent crime, drug trafficking, and human-rights abuses are prevalent.

Applicant's Venezuelan father-in-law creates a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through Applicant's wife. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding 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.

I considered the totality of Applicant's ties to Venezuela. I also considered the nature of the Venezuelan government. Applicant's grandmother, father-in-law, mother-in-law, and two siblings-in-law are citizens and residents of Venezuela. Only his father-in-law, the retired military officer, was alleged as a concern in the SOR. In contrast, Applicant's parents, stepmother, wife, children, sibling, half-siblings, and one of his siblings-in-law are in the United States as U.S. citizens or permanent residents.

Applicant's wife and her father are not close, likely because he left her mother and had children with another woman. Applicant believes they talk or e-mail about twice a year. Applicant has even less contact with him, only speaking with him once since he got married, when his first child was born. Applicant's father-in-law has never visited them in the United States and has never seen their children.

Applicant's ties to Venezuela are outweighed by his deep and longstanding relationships and loyalties in the United States. It has been more than eight years since he and his wife have visited Venezuela. His closest family, life, home, assets, and professional career are in the United States. He credibly testified that he would report any attempt to use his foreign connections against him. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of Venezuela. There is no conflict of interest, because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

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(d):

(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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis.

Applicant is a loyal U.S. citizen with strong endorsements. He credibly testified that he would report any attempt to use his foreign contacts to coerce him to reveal classified information. His ties to Venezuela are far outweighed by his deep and longstanding relationships and loyalties in the United States.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

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
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Subparagraph 1.a:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge