



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 15-00163
)
 Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: Cherish A. Bennett, Esq.

06/09/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Applicant has mitigated the concerns raised by her family members who are citizens and residents of Uzbekistan. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on June 25, 2014. On August 29, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The DOD CAF 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) implemented by the DOD on September 1, 2006, and as amended on June 8, 2017.

Applicant answered the SOR, through her attorney, on September 30, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 3, 2016, and the case was assigned to me on September 26, 2016.

On December 20, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 10, 2017. I convened the hearing as scheduled. Department Counsel offered Government Exhibits (GX) 1 and 2. GX 1 was admitted in evidence without objection. Applicant objected to GX 2, and I sustained her objection. Applicant's Exhibits (AX) A through F and H through N were admitted without objection. Department Counsel objected to AX G, which I admitted over his objection. DOHA received the transcript (Tr.) on April 25, 2016.

Procedural Matters

The hearing in this case was held under the AG implemented on September 1, 2006. However, the DOD implemented amended AG on June 8, 2017, while this decision was pending. The applicable AG in this case is Guideline B (Foreign Influence.) While there are several changes in Guideline B under the amended AG, none of them have any applicability to this case, and therefore did not have any impact on the outcome of this decision. I have appended both versions of Guideline B to this decision.

Both parties requested I take administrative notice of certain facts about Uzbekistan. I admitted Applicant's summary of facts and supporting documentation without objection as Administrative Exhibit (AD EX) III. I admitted Department Counsel's summary of facts and supporting documentation (AD EX II), over Applicant's written objection (AD EX I.) The facts I considered are discussed below.

Findings of Fact

The SOR alleges that Applicant's mother and sister are citizens and residents of Uzbekistan. In her Answer, Applicant admitted each of these allegations, and her admissions are incorporated in my findings of fact.

Applicant is a 36-year-old software engineer employed by a defense contractor since January 2014. She worked as an intern with the same defense contractor from April 2012 through December 2013. She was awarded an associate's degree in August 2010, and a bachelor's degree in December 2013. She and her husband married in October 2005. (GX 1.)

Applicant was born in Russia in 1980. Her family moved to Uzbekistan in 1982, and she resided there with her mother and sister until 2005, when she immigrated to the United States. Her parents divorced in 1986, and she was estranged from her father for the remainder of his life. (Tr. 97-88.) She completed an associate's degree in Uzbekistan in science and computer engineering in 2000. (Tr. 36-37; Tr. 44.) Between August 2000 and December 2003, she worked as an administrative assistant for the military academy and later for the ministry of defense, both government entities. She then worked for an international organization, of which the United States is a member, until she left Uzbekistan in 2005. (Tr. 44-49.)

Applicant and her husband met in Uzbekistan in June 2003, while he was working there for a U.S. defense contractor. He returned to the United States, and he and Applicant maintained contact through electronic mail. Applicant's husband returned to Uzbekistan in September 2003. The couple became engaged in 2004, and Applicant came to the United States on a fiancée K-1 visa in August 2005. They married in October 2005. (Tr. 88-90; AX D.)

Applicant's mother is a teacher. Applicant talks to her weekly or every other week by telephone. Applicant has not seen her mother since August 2005. (Tr. 59.) Applicant has never had a close relationship with her sister, and has not had any significant contact with her sister since 2012. (Tr. 58; Tr. 61.) However, Applicant's sister and niece live with Applicant's mother. Applicant occasionally speaks with her sister when her sister answers Applicant's telephone calls to her mother. Applicant used to send nominal gifts to her niece, but no longer does so. Applicant has never met her niece. (Answer.) Applicant's sister served in the Uzbekistan military from 1998 until 2010, and has had no military affiliation or obligation since that time. (Tr. 63.) She currently works for the international organization where Applicant was previously employed, in a job which Applicant helped her sister apply for in 2012. (Tr. 92.) Applicant has invited her mother to visit, but she has not. Applicant has not invited her sister to visit. (Tr. 61.)

Applicant became a naturalized U.S. citizen in April 2011. Shortly thereafter, she contacted the Uzbek embassy seeking instruction on how to renounce her Uzbek citizenship. The embassy personnel were not helpful, and Applicant was unable to successfully navigate the process through the embassy's website. After several months, Applicant hired an attorney. Through the attorney, Applicant sent an affidavit of renunciation, her Uzbekistan-issued passport, copies of her naturalization certificate and marriage license, and an explanatory cover letter to the Uzbek embassy by registered mail. She did not receive any confirmation from the Uzbek embassy, but she did receive the receipt of delivery. She believes that she has affirmatively renounced her Uzbek citizenship. (AX D; Tr. 53-55.)

Applicant has have lived in the United States for much of her adult life and considers the United States to be her home. (Tr. 30.) She believes that people have far better opportunities in the United States than in Uzbekistan, and she has no intention of returning to Uzbekistan to live. (Tr. 56.) In about April 2015, Applicant applied for, and was offered, a part-time position as an engineering duty officer with the U.S. Navy Reserve. She stated that her motivation for applying for this position is, "I would like to give back. Basically, I wanted to give back all the opportunities that I have, everything that I have right now it's because of this country. So, that was my way to give back." This position is dependent on Applicant's eligibility for a security clearance. (Tr. 83.)

Applicant and her husband purchased their house in May 2009. Applicant's assets in the United States also include: several bank accounts; a money market account; a 401(k) retirement account through her current employer and one through a previous employer; and, a vehicle on which she is still making payments. (Tr. 51-52; AX J; AX K.) Applicant possesses a valid U.S. passport. (AX L.)

Applicant's mother owns her flat in Uzbekistan, which by law, Applicant and her sister will inherit. However, Applicant will take any and all necessary steps to disclaim her interest in the flat. She has no other actual or potential financial interests in Uzbekistan. (Answer; Tr. 62.) She has not traveled to Uzbekistan since she left in August 2005. (Tr. 59.)

Applicant's husband is a retired combat veteran who served honorably in the U.S. Army from 1975 to 1995. He has worked in various positions as both a defense contractor and as civilian Government employee. He has been employed by the U.S. Government since 2012. He recommends Applicant for a security clearance in the context of having served in the defense industry for more than 41 years, stating that Applicant has the requisite principles to protect classified information, and is unwaveringly loyal to the United States. (AX F; Tr. 118.)

Applicant's neighbor since May 2009, a corrections officer, states that Applicant has a strong sense of loyalty and duty and a great deal of integrity. Her managers and co-workers collectively view Applicant as trustworthy, honest, ethical, and professional. They consider her to have an exemplary work ethic and highly recommend her for a security clearance. (AX F.)

Uzbekistan gained independence from the Soviet Union in late 1991, but maintains close ties with Russia and China. Uzbekistan is an authoritarian state with a constitution that provides for a presidential system with separation of powers among the executive, legislative, and judicial branches. The executive branch under former President Islam Karimov dominated political life and exercised nearly complete control over the other branches of government.

On September 2, 2016, President Karimov died in office and new elections took place on December 4, 2016. Former prime minister Shavkat Mirziyoyev won with 88 percent of the vote. An international voting-observation organization, in its preliminary election observation mission report, noted that "limits on fundamental freedoms undermine political pluralism and led to a campaign devoid of genuine competition." The report also identified positive changes such as the election's increased transparency, service to disabled voters, and unfettered access for 600 international observers¹.

The United States pursued close ties with Uzbekistan following its independence. After the September 11, 2001, terrorist attacks in the United States, Uzbekistan offered over-flight and basing rights to the U.S. and coalition forces. However, in 2005, the Uzbek government violently cracked down on unrest in the southern city of Andijon. The U.S. Government and others criticized this crackdown, and in response, the Uzbek government terminated U.S. basing rights in Karshi-Khanabad that were important to the U.S. military efforts in neighboring Afghanistan. Subsequently, Uzbekistan shifted towards closer ties with Russia and China.

¹ The Requests for Administrative Notice were submitted by both parties before this information was published in U.S. Department of State documents. These fact were published at:
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265554>.

Regional threats include illegal narcotics, trafficking in persons, extremism, and terrorism. Uzbekistan shares a border with Afghanistan and has expressed concern about a potential “spillover” effect of terrorism. The Uzbek government remains concerned about the return of foreign terrorist fighters, the recruitment of Uzbeks by Islamic State of Iraq and Levant (ISIL), and violent extremist groups operating in Afghanistan and Pakistan.

However, the Uzbek government has made it a priority to limit the activities of extremist and terrorist groups such as ISIL, al-Qaida, and others, which have expressed anti-U.S. sentiments. Due to the domestic and international threats, the Uzbek government has implemented heightened security measures, including establishing security checkpoints, restricting access to certain streets and buildings, and initiating a media campaign about the dangers of extremism.

The U.S. Department of State advises U.S. citizens that potential for terrorist attacks or localized civil disobedience still exists in Uzbekistan. Supporters of terrorist groups are active in the region. These groups and others have conducted kidnappings, assassinations, and suicide bombings, as well as an attack on the U.S. Embassy in Tashkent in 2004.

Uzbek law enforcement uses its powers to suppress legitimate expressions of political or religious belief. In addition to restrictions on religious freedom, the most significant human rights problems include arbitrary arrest and detention; prolonged detention; harsh, even life-threatening prison conditions; torture and abuse of detainees; and denial of due process and a fair trial. Restrictions on freedom of speech, press, assembly and association, movement and communication, and violence against women were also prevalent. Government-organized forced labor, including that of children, is an on-going concern.

In 2003, Congress passed legislation prohibiting or limiting foreign assistance to Uzbekistan, unless the Secretary of State determines that Uzbekistan has made substantial progress in meeting commitments to respect human rights. This legislation has since been amended to block certain Uzbek government officials from entering the United States, and to permit the Secretary of State to waive foreign assistance restrictions for a defined time period, dependent on U.S. national security needs. Such waivers have been issued while assessing Uzbekistan’s human rights conditions as a “serious concern.”

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly

consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Guideline B, Foreign Influence

The foreign influence security concern is explained at 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 record evidence, to include the matters accepted for administrative notice, establish the following disqualifying conditions:

AG ¶ 7(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; 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 or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

When foreign family ties are involved, the totality of an applicant's family ties to a foreign country, as well as each individual family tie, must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

AG ¶¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Although the relationship between the United States and Uzbekistan is largely favorable, Uzbekistan has a poor human rights record, which includes government intervention on personal freedoms. Terrorist and extremist groups, present in many regions, are known to specifically target U.S.-interests. Accordingly, the record contains

sufficient information to support a finding that Applicant's relationships with her mother and sister create a heightened risk of coercion and exploitation and the potential risk for a conflict of interest. AG ¶¶ 7(a) and 7(b) are established.

Guideline B 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

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's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

The following mitigating conditions under this guideline are potentially relevant:

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;

AG ¶ 8(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; and

AG ¶ 8(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.

An applicant with close family members and interests in a foreign country faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. Furthermore, an applicant is not required "to sever all ties with a foreign country

before he or she can be granted access to classified information.” ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008). However, what factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable. ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014). An administrative judge’s predictive judgment in these types of cases must be guided by a commonsense assessment of the evidence and consideration of the adjudicative guidelines, as well as the whole-person factors set forth in the Directive. A judge’s ultimate determination must also take into account the overarching standard in all security clearance cases, namely, that any doubt raised by an applicant’s circumstances must be resolved in favor of national security. AG ¶ 2(b).

For the reasons set out in the above discussion of AG ¶ 7(a), AG ¶ 8(a) is not established. Applicant’s contacts with her mother are frequent and not casual. While Applicant’s contacts with her sister are incidental to contacting her mother, and Applicant states that she and her sister are not close, the relationship with her sister, by its nature, is not casual. AG ¶ 8(c) is not established.

AG ¶ 8(b) is established. Applicant has demonstrated her undivided loyalty and her ties to the United States, and would resolve any potential conflict of interest that could arise from her relationships with family members in Uzbekistan in favor of U.S. interests. Specifically, Applicant came to the United States in 2005, became a naturalized U.S. citizen in 2011, and considers the United States to be her home. She effectively renounced her Uzbek citizenship in 2011, and has not returned to Uzbekistan since she left. She earned an associate’s degree and a bachelor’s degree in the United States, and is seeking an officer position in the U.S. Navy Reserve. None of her family members is currently affiliated with a foreign government, and her sister has been a civilian since 2010. Applicant’s husband, to whom she has been married since 2005, is a combat veteran who continues to serve the United States through his civilian Government employment. Applicant and her husband bought a house in 2009, and all of Applicant’s assets are in the United States.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis and I have considered the factors in AG ¶ 2(a). Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but I have also considered the following:

Applicant began working for her current employer as an intern while completing her bachelor's degree. She is considered trustworthy, honest, and hardworking by her superiors, colleagues, and neighbor. Her husband, a retired combat veteran and current civilian Government employee, commends her loyalty to the United States. Applicant testified sincerely and credibly about her dedication to the United States, and has demonstrated this dedication through her application for a position with the Navy, as well as through her employment with a defense contractor.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her foreign family connections. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence)	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge