



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



In the matter of:)
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XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-00618
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

06/08/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 8 January 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations and Guideline B, Foreign influence.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and

¹Consisting of the File of Relevant Material (FORM), Items 1-11 and Applicant's Response to the FORM (Response). I have also taken administrative notice of United States (U.S.) Government documents on U.S. relations with Cuba, as requested by Department Counsel.

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. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. This decision is issued under the new AG, but I have examined the old AG to ensure that I would not reach a different result if I issued this decision under the old AG. I would not rule differently under either set of AG.

Appeals (DOHA). The record in this case closed 21 June 2016, when Department Counsel stated no objection to Applicant's response to the FORM. DOHA assigned the case to me 7 April 2017.

Findings of Fact

Applicant admitted the SOR allegations. He is a 35-year-old electrician employed by a U.S. defense contractor since August 2012. He appears to have been continuously employed full time since September 2002, except for three-months January-March 2008 and six-months February-August 2012.³ He has not previously held a clearance.

The SOR alleges, Government exhibits (Items 1-11) substantiate, and Applicant admits, that he was \$125,000 past-due on his mortgage (SOR 1.a), had 12 delinquent debts (SOR 1.b-1.l and 1.n) that had been put into a Chapter 13 bankruptcy plan, among others (SOR 1.o), and had owed \$1,229 on an automobile loan (SOR 1.m)—a debt he had paid in September 2012 (Answer).⁴ He also admits that his mother-in-law is a resident citizen of Cuba.

Applicant disclosed his delinquent mortgage and Chapter 13 bankruptcy petition, as well as his mother-in-law's foreign residence and citizenship on his September 2012 clearance application (Item 4). He discussed these issues with a Government investigator in October 2012 (Item 6), using his September 2012 credit report (Item 5). Item 5 is the basis for all the SOR financial allegations, except for SOR 1.a, which appears in Applicant's January 2015 credit report (Item 7).⁵ Item 7 also shows that SOR 1.m was paid in September 2012.

Applicant attributed his financial problems to his brief unemployment in early 2008. That put him behind on his mortgage, and he was unable to catch up with jobs he held between March 2008 and June 2012. He also fell behind on his credit accounts.

Applicant's November 2015 Answer (Item 3) included documentation that Applicant obtained legal counsel in 2009 to help him get his mortgage modified, but was unable to obtain relief until October 2015, when he was offered a three-month trial period payment, after which he would qualify for a permanent modification. Applicant made the 1 November 2015 payment as required. He completed the trial period in January 2016, and was offered a permanent modification (Response). At the time of his Response, Applicant had begun regular payments under the new agreement.

³He listed April 2012 as the start of his unemployment on his clearance application (Item 4). However, his unemployment eligibility questionnaire states that he last worked the end of February 2012.

⁴At which point he received title to the automobile (Answer).

⁵With a creditor who has only held the account for four months. However, the entry reflects that the creditor is a successor creditor for an original creditor that appears in Applicant's September 2012 credit report as being in a wage earner plan.

Applicant also documented that the Chapter 13 plan had been confirmed in July 2012, and that the bankruptcy petition included all the debts alleged in the SOR; although he did not provide documentation of any payments on the plan. However, by 22 April 2016, when Department Counsel completed the FORM, the Government had copies of Applicant's March 2011 Chapter 13 bankruptcy petition (Item 8) and his July 2011 Chapter 13 amended payment plan (Item 9), as well as the July 2012 order confirming the Chapter 13 plan (Item 10).

Applicant's June 2016 Response documented that Applicant began making plan payments in May 2011, and documented payments to the trustee through April 2016. As of 6 June 2016 the trustee listed the case status as "about to close." The documentation also shows the amounts paid to the creditors included in the bankruptcy plan.

Applicant received the financial counseling required by his bankruptcy petition in May 2011. In 2012, he earned \$14,400. He earned \$45,500 in 2013, \$49,000 in 2014, and \$57,000 in 2015 (Answer). He also started his own business in 2014, and derives modest additional income from his efforts.

Applicant was born in Cuba in March 1981. He immigrated to the United States (U.S.) in October 2001, when he was age 20, and became a naturalized U.S. citizen in May 2007. He renewed his Cuban passport in April 2007, as required by U.S. immigration law, and used it to travel to Cuba a few times (most recently in 2010), for his mother-in-law to meet her new-born grandson. It expired in April 2013 and Applicant has not renewed it, nor does he plan to renew it (Item 6). All Applicant's immediate family live in the United States (U.S.). His mother-in-law is a resident citizen of Cuba, employed as a nursing assistant in a home for the elderly. Applicant speaks to his mother-in-law on special occasions, but his wife is a more regular correspondent with her mother. Applicant's mother-in-law is unaware that he is applying for a security clearance.

Cuba is a totalitarian, communist state governed by a one-party system, the Cuban Communist Party (PCC). The PCC is the only legal political party in the country. It is an authoritarian state that routinely employs repressive methods against internal dissent and monitors and responds to perceived threats to authority. These methods may include physical and electronic surveillance, as well as detention and interrogation of both Cuban citizens and foreign visitors. Human rights conditions in Cuba remain poor, as the Cuban government limits fundamental freedoms, including freedom of expression and peaceful assembly.

However, in July 2015, the U.S. re-established diplomatic relations with Cuba. General travel licenses in 12 categories had been issued by the Government in January 2015. Nevertheless, the Government has warned U.S. citizens of the risks of traveling to Cuba because of its poor human rights record.

Cuba has long targeted the U.S. with extensive espionage activities. The instances cited by Department Counsel generally involve efforts to infiltrate U.S.

Government agencies or U.S. based exile groups. There is no evidence that Cuba targets its expatriate citizens by applying pressure to family members still residing in Cuba.⁶

In recent years, the Cuban government has detained U.S. citizens it suspects of engaging in activities perceived to undermine state security. Official crime statistics are not published by the Cuban Government, however U.S. citizens have reported non-violent theft-related crimes such as pickpocketing, purse snatching or taking of unattended or valuable items. There is also evidence that violent crime has increased in Cuba, and is generally associated with assaults committed during a burglary or robbery. Harsh prison conditions, arbitrary arrests, selective prosecution, and denial of fair trials continue.

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 F (Financial Considerations) and 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.⁷

⁶Notably, the most recent case of espionage cited by Department Counsel involves a non-Hispanic member of the U.S diplomatic corps (and his non- Hispanic wife), who joined the foreign service in 1997, was evaluated for recruitment during a 1978 official trip to Cuba, and was subsequently recruited in 1979 before being caught in 2009. Presumably, Applicant's background investigation uncovered no similar vulnerabilities.

⁷See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant experienced a period of financial difficulties around 2008, when he was unemployed for three months, and 2012, when he was unemployed for about six months.⁸ Perhaps, his three months' unemployment should not have affected his finances as much as they did, but it did. Nevertheless, his first step was to obtain legal counsel in 2009 to obtain a mortgage modification. He does not appear to have been dilatory in pursuing that remedy, but he was unable to obtain relief until October 2015. In the meantime, he had undertaken to put all his delinquent debts into a March 2011 bankruptcy petition, having made an initial payment in January 2011, and begun plan payments in May 2011, before the plan was finally confirmed in July 2012. Finally, Applicant paid off his automobile loan in September 2012, after he regained employment in August 2012.

Applicant meets most of the mitigating conditions for financial considerations. While his financial difficulties are both recent and multiple, the circumstances which led to his financial situation are unlikely to recur.⁹ They were arguably due to circumstances beyond his control, but even if they were not, he dealt with them responsibly, having begun to address his mortgage in 2009, his delinquent credit accounts in March 2011, and his automobile loan in September 2012.¹⁰

Applicant submitted proof that he received the required bankruptcy financial counseling, and his debts have clearly been resolved.¹¹ Applicant was in contact with his creditors well before the SOR was issued, and he made a good-faith effort to address these debts.¹² Accordingly, I conclude Guideline F for Applicant.

The Government also established a case for disqualification under Guideline B, but Applicant mitigated the security concerns. 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, 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

⁸¶19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁹¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

¹⁰¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

¹¹¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

¹²¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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.¹³ 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.¹⁴ In addition, security concerns may be raised by 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.¹⁵ Finally, 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 a heightened risk of foreign influence or exploitation.¹⁶

Considering first the country involved, Cuba and the U.S. have recently resumed diplomatic relations, but Cuba must still be considered an active threat against U.S. information. However, it has not been demonstrated that the Cuban government is actively engaged in the collection of U.S. intelligence in a way which would make Applicant or his mother-in-law likely targets for coercion, duress, or influence. The Government's evidence explains the methods used by Cuban intelligence to pursue U.S. information, and those methods pursue information directly through infiltration of Government agencies or exile groups. There is no indication Cuban agents seek to influence ex-patriate citizens by pressuring their relatives in Cuba.

Considering Applicant's circumstances, the Government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited contacts in Cuba. Applicant's mother-in-law has no direct connection to the Cuban government, and there is nothing in his connection to her to raise a concern over protecting classified information.

Similarly, Applicant's mother-in-law raises no potential conflict of interest. He owes no duty to any Cuban entity, and his family connection is minimal. Further, he has been a U.S. citizen for over nine years, and his commitment to U.S. interests is manifest. His contacts with his mother-in-law in Cuba are less than typical, and there is

¹³AG ¶ 6.

¹⁴AG ¶ 7(a).

¹⁵AG ¶ 7(b).

¹⁶AG ¶ 7(e).

nothing in the circumstances of her being in Cuba, or in Applicant's contacts with her, to heighten the risk that he could be impelled or compelled to provide protected information to Iraq. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his family members in Iraq. Accordingly, I resolve Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
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Subparagraphs a-o:	For Applicant
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Paragraph 2. Guideline B:	FOR APPLICANT
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Subparagraph a:	For Applicant
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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