



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



In the matter of:

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) ISCR Case No. 15-03216
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Applicant for Security Clearance

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Mary E. Kuntz, Esq.

10/14/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On October 30, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline B (Foreign Influence). The action was taken 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), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 11, 2016. A notice of hearing was issued on July 11, 2016, scheduling the case for August 23, 2016. Government Exhibits (GX) 1-2 were admitted into evidence without objection. Applicant testified and presented two witnesses. Applicant Exhibits (AX) A-F were admitted into the record without objection. The transcript was received on August 31, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Procedural Issue

Department Counsel and Applicant did not present materials for administrative notice regarding Bolivia. 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. Department Counsel acknowledged that in this case the concern is not about the particular country conditions. (Tr. 18) The primary focus was Applicant's father's contacts with certain Bolivian political figures.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline B with the exception of SOR ¶ 1.c. He provided detailed explanations with his answer.

Applicant is 28 years old. He was born in Bolivia in August 1988. When he was four months old, he came to the United States with his mother and father. He became a naturalized U.S. citizen in 2006, at the time that his parents were naturalized as U.S. citizens. (Tr. 32) He does not have a Bolivian passport. His younger brother was born in the United States. He received his undergraduate degree in information technology (IT) 2013. Applicant earned another undergraduate degree in government and politics. While in undergraduate school, he worked as a paid intern for a federal agency. He is single. He completed a security clearance application in 2014. He has been employed with his current employer since March 2014. This is his first request for a security clearance. (GX 1)

Applicant was educated and has lived in a small community in the United States in state A. He has lived with his family at all times. The community is a Bolivian emigre community. Applicant attended a public high school and engaged in all sports. He received scholarships due to his academic prowess. He is now attending graduate school. (Tr. 11) He plans to complete the graduate program in 2019.

Applicant has traveled to Bolivia every year with his parents since about 2006. He has visited his extended family of aunts, uncles, cousins and grandparents on those visits. He has never resided in Bolivia, save for the first four months after his birth. He always has traveled with his family and never alone. (Tr. 52)

FOREIGN INFLUENCE

The SOR alleges under paragraph 1.a that Applicant's father is the President of the Bolivian-American Chamber of Commerce. Applicant's father is a minor leader in the community in State A.. He helps other Spanish speaking people in that community. The group is called the Bolivian-American Chamber of Commerce but has no connection with any formal foreign organization that is recognized by other countries. (Tr. 10) His

father invites members of the community to come to his house to get information concerning practical matters. He has invited the Small Business Administration (SBA) and the Internal Revenue Service (IRS) to speak to the Spanish speaking community small business members. These informal seminars foster social and commercial skills. (AX F) This group is not a foreign entity. Applicant's father was elected by the other businessman to be the President. Applicant is not a member of the group, nor does he participate in its activities. He acknowledged that he does help with the technical aspects of the entity's computer if and when needed. He volunteers for the job and is not paid.

Applicant's father is the editor of a local newspaper - Las Americas -, which is distributed to the immediate area. It has local, national, international news in Spanish. Applicant's father does not write the articles. He is the administrative manager He manages the entire operation. It is the main source of income for the family business. The money is generated through advertisements, which comprise about 60% of the paper. (Tr. 34, AX D) It is issued each Friday. The target audience is Hispanic readers in the community. It is not political in nature. (Tr. 36) The paper does not receive any foreign funds.

Under SOR allegation 1.b, it is alleged that Applicant and his father have had numerous contacts with a former governor who was also a former presidential candidate of Bolivia, and who now lives in the United States. Applicant admits that he had been introduced when the Bolivian man had invited his family to a birthday party to his home in the United States. Applicant disclosed that in 2010, he has greeted the gentleman. He listed this information on his security clearance application. He noted that the Bolivian gentleman visited Applicant's father's home in the United States for a social event, such as a barbeque or a Christmas party. In 2013, he was invited to Applicant's graduation. He has had no contact with him in Bolivia.

Under SOR allegation 1.c, it is alleged that Applicant and his father have had multiple contacts with another Bolivian politician. Applicant met the Bolivian man at his father's house. Applicant met the senator at an Awards Ceremony for the local community association in State A. He did not attend the ceremony in 2012.

Under SOR allegation 1.d, it is alleged that Applicant and his father have contact with a Bolivian gentleman who is a current representative in the House of Representatives in Bolivia. Applicant has been introduced to this Bolivian representative, but has had no conversation with him. Applicant met him at an outdoor festival in the United States. (GX 1) They have never discussed Bolivian politics.(Tr. 48)

Under SOR allegation 1.e, it is alleged that Applicant has eight uncles who are citizens and residents of Bolivia. He acknowledges that he has casual contact with them, especially his father's brothers. He sees them when he visits Bolivia. When he is in the United States, if he is in the home when one of them calls, he will say hello.

Under SOR allegation 1.f, it is alleged that Applicant has nine aunts who are citizens and residents of Bolivia. Again, he acknowledges that he sees them if he visits Bolivia and when in the United States he rarely speaks to them on the phone.

Under SOR allegation 1.g it is alleged that Applicant has two grandmothers and grandfathers who are citizens of Bolivia. Again, Applicant sees them if he visits Bolivia and in the United States, he may say hello, if he is home when they call.

Under SOR allegation 1.h, it is alleged that Applicant has sixteen cousins who are citizens and residents of Bolivia. Applicant may see some cousins when he and his family visit Bolivia for Christmas or summer vacation.

Under SOR allegation 1.i, it is alleged that Applicant has seven acquaintances who are citizens and residents of Bolivia. He sometimes has limited contact on social media with them. He may see some of them when he visits Bolivia. He disclosed this information as an update (AX A and E) because he went to the gym frequently and met other young people. (Tr. 55) He met a girl with whom he sometimes communicates by phone.

Applicant submitted letters of recommendation from his family friend who has known him for six years. He describes Applicant as honest reliable, and trustworthy. He also has had business working with Applicant's father. Applicant has no involvement with the Bolivian Chamber of Commerce, according to this friend. In fact, he knows the security issues that are involved and has seen firsthand that the Chamber is not connected internationally or affiliated in any way with a foreign entity. It is a non-profit entity. He recommends Applicant for a security clearance. (AX B)

Applicant's current employer describes him as a person who delivers quality work product and always goes beyond expectations. He has good judgment and has worked with many colleagues and clients, who speak highly of his trustworthiness. Applicant has recently received a promotion. The employer is familiar with the specific issues in this case. He mentors Applicant and commends his work solutions. (AX C)

Applicant's father testified at the hearing through a certified court translator. He became a naturalized U.S. citizen in 2006. He has lived with his wife and children in the United States since 1988. He described his Spanish-language newspaper which is directed at the local Latin American community in the United States where he lives in State A. The paper reports local as well as Central and South American news. The paper is free. He does not write any of the articles for the paper. They are taken from a news agency. The office for the paper is his home. The focus of the paper is not political. It is not limited to Bolivian businessmen. (Tr. 85, AX F) Applicant's father testified that there are about 255 members of the Chamber of Commerce. He affirmed that they hold meetings and seminars so that small businessmen can understand how to legally run a business in the United States. (Tr. 87) His son, Applicant, does not play a role in the organization. When Applicant's father visits Bolivia, he does not see any Bolivian politicians. The three Bolivian gentleman at issue have no ties to terrorists. (Tr. 98)

Applicant's friend who went to college with him testified at the hearing that he sometimes works for Applicant's father's newspaper. He helps with web design from his

home. He and Applicant have remained friends and go to movies and sports events. (Tr. 101)

ADMINISTRATIVE NOTICE

The United States established diplomatic relations with Bolivia in 1849 following its independence from Spain. While economic growth has been positive throughout the last decade, Bolivia remains one of the poorest countries in the Western Hemisphere. Bolivia is a producer of cocoa and cocaine, and Bolivia's international obligation to control illegal narcotics is an issue in the bilateral relationship.

The United States is one of Bolivia's top trade partners. Bolivia is generally open to foreign direct investment, but legal uncertainties include regulatory changes called for in the 2009 Bolivian constitution.

Bolivia and the United States belong to a number of the same international organizations, including the United Nations, Organization of American States, International Monetary Fund, World Bank, and World Trade Organization.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 Executive Order 10865 provides that 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The security concern under Guideline B is set out in AG ¶ 6 as follows:

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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also 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.” AG ¶ 7(b).

Applicant is 28 years old. He came to the United States with his mother and father when he was four months of age. He has resided in the United States his entire life. He became a naturalized U.S. citizen when his parents did in 2006. His family came to the United States in 1988. His younger brother was born in the United States and is a U.S. citizen. Applicant was educated in the United States. Applicant’s father has established a Bolivian Chamber of Commerce in the United States, which is a local organization to help Hispanic small businessmen with how to legally operate a small business within the confines of the law. It is a non-profit U.S. organization with no direct ties to Bolivia. His father is also the editor of a free newspaper, which is distributed in the United States and is not for any political purpose. Applicant has extended family of aunts, uncles, cousins, and grandparents who are citizens and residents of Bolivia. He sees them when he travels with his family to Bolivia. He maintains minimum contact when he is in the United States. Applicant met, through his father, three Bolivian gentlemen who were or are in politics in Bolivia. However, he has only been introduced to them at various social functions in the United States. He does not maintain contact with any of them. They have never discussed politics, nor have they discussed his work. Based on this scant evidence arguably, AG ¶ 7(a) and 7(b) are raised.

Since the Government produced evidence to raise disqualifying conditions in AG ¶¶ 7(a) and (b),⁷ the burden shifted to Applicant to produce evidence 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).

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).

⁷However, the Government stated that the concern was not with the country, but with the three politicians.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, 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, or the foreign country is associated with a risk of terrorism.

While there is no evidence that intelligence operatives from Bolivia seek or have sought classified or economic information from or through Applicant, or his relatives living in Bolivia or his father's three acquaintances, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services. Applicant has no relationship with the three politicians cited in the SOR .

Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a). 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). Similarly, AG ¶ 8(b) can mitigate concerns when "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." AG ¶ 8(c) can mitigate if "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."

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has been in the United States since 1988. He has been educated in the United States. He has never resided in Bolivia, save for four months. He has traveled with his family over the years to see family, but he resides in the United States. He has been employed since 2014 with the same company. He is praised by his employer. He is a naturalized U.S. citizen. He has chosen to remain in the United States. His financial, professional, and primary personal ties are in the United States..

As to the contact with the three Bolivian politicians that he met through his father, there has been no continuing contact. He was introduced to them. His father has an organization in the United States that helps all Hispanic speaking individuals with

conducting small businesses. His father has not maintained ties with any foreign entity. Neither the Bolivian Chamber of Commerce or the newspaper could influence Applicant in any political way. His father's business and personal relationships should not be attributed to Applicant. The connections are too insubstantial to establish a security concern. AG ¶ 8(c)

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family in Bolivia. Moreover, there is no evidence, however, that terrorists, criminals, the Bolivian government or those conducting espionage have approached or threatened Applicant, or his family. As such, there is a reduced possibility that either Applicant or extended family living in Bolivia would be specifically selected as targets for improper coercion or exploitation.

In sum, Applicant has mitigated the foreign influence concerns. Applicant's connections to the United States are strong. He has lived here his entire life. His immediate family members are naturalized U. S. citizens. He is committed to his professional life in the United States. There is substantial mitigation in this case. He can be expected to resolve any conflict of interest in favor of the United States. Foreign influence security concerns are mitigated under Guideline B. Even if security concerns are not mitigated under Guideline B, they are mitigated under the whole-person concept, *infra*.

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 an 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 28 years old. He came to the United States with his mother and father when

he was four months old. Applicant and his parents became naturalized U.S. citizens in 2006. Applicant has resided in the United States his entire life. For all the foregoing reasons, I find that Applicant mitigated the foreign influence concerns.

Applicant has excellent personal and professional references from friends, managers, and his current employer. He is respected for his trustworthiness and loyalty to his company. He produces quality work. He strives to gain more knowledge by completing his graduate studies.

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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Subparagraphs 1.a-1.i:	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 grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge