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ISCR Case No. 15-05454

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Department Counsel

For Applicant: *Pro se*

November 8, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 15, 2014. (Government Exhibit 1.) On March 25, 2016, the Department of Defense (DoD), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended), issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant answered the SOR in writing on April 21, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. The case was originally assigned to another Administrative Judge and was scheduled for hearing on July 21, 2016. At that time, it was determined that Applicant was no longer working for his sponsored employer, yet his employer had not updated the JPAS. The DOHA Administrative Judge had no jurisdiction, and the matter was

¹The SOR was amended on July 21, 2016, by the previously assigned Administrative Judge to reflect Applicant's correct name. (Transcript No. 1, pg. 3.)

adjourned. Applicant was hired by another defense contractor and is now sponsored for clearance by his new employer. On August 14, 2016, the case was assigned to the undersigned Administrative Judge for processing. A notice of hearing was issued that same day, scheduling the hearing for September 16, 2016. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were received without objection. Applicant offered no exhibits. He did testify on his own behalf. The record remained open until close of business on September 29, 2016, to allow Applicant the opportunity to submit additional documentation. Applicant submitted no supplemental documents. The transcript of the hearing (Tr.) was received on September 28, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Mexico. (See Tr. p. 16.) There was no objection from Applicant. (See Tr. p. 16.) The request and the attached documents were admitted into evidence and included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The Applicant is 34 years old, and is married with three children. He has a high school diploma from Mexico. He is employed with a defense contractor as a welder, mechanic and pipe bracer, and is seeking to obtain a security clearance in connection with this employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts, which could create the potential for foreign influence that could result in the compromise of classified information.

Applicant admitted each of the allegations set forth under this guideline, except 1.c. He was born in Mexico in 1981. He grew up there, and in 2001, at the age of 18, while still considered a minor, he was sponsored by his father, a permanent resident, to come to the United States. (Tr. p. 23.) In 2003, Applicant married a Mexican citizen who is currently a permanent resident of the United States. In 2012, Applicant became a naturalized United States citizen, and he possesses a valid American passport. Applicant testified that his wife plans to become a naturalized citizen when she is eligible next year. (Tr. p. 42.) They have three children who were all born in the United

States. Applicant has been working for his current employer for the past four months. Prior to that he worked for another defense contractor for about two and a half years, who initially sponsored him for the security clearance. His current employer has now taken over that sponsorship. (Tr. pp. 20-22.)

Applicant's mother and father, who have now lived in the United States for over thirty years, are currently living with the Applicant in the United States. They are both legal residents of the United States. Applicant has two sisters and one brother who are citizens of Mexico. His two sisters live in Mexico. One of them has started the application process to come to the United States. The other sister is married and plans to stay in Mexico. Applicant's one brother is a new United States resident and now lives in Arizona. Applicant's parents-in-laws are citizens and residents of Mexico. They have visas and come at times to visit the Applicant and his wife in the United States. Applicant has a sister-in-law who is a citizen and resident of Mexico. Applicant, his wife, and children visit her in Mexico about once or twice a month, and spend less than a day or two at a time. Applicant also travels to Mexico for vacation at times. Except for the reckless drivers, he does not feel unsafe or in danger while in Mexico. (Tr. p. 40.)

Applicant served in the Mexican military for mandatory three months when he turned 18, before coming to the United States. He explained that it is similar to community service, done only on Saturday. Applicant cleaned the streets, painted the school, etc. He was not paid for his military service. (Tr. pp. 35-37.)

Applicant's mother-in-law gave his wife the money to place a deposit on a piece of raw property in Mexico. The property is in his wife's name. Applicant made the payments and has now paid it off. He believes the property's value to be approximately \$27,000. (Tr. p. 33.)

Applicant credibly testified that he has no loyalty to Mexico. He has established his permanent home in the United States, and plans to live here the remainder of his life. His three children are native American-born citizens. If he or his family were ever threatened in any way by any foreign national or Mexican cartels he would report it to his company. He understands his responsibility to keep company and or DoD information secret and private. (Tr. pp. 43-46.)

I have taken administrative notice of the political situation in Mexico. The United States relations with Mexico are strong and vital. The two countries share a 2,000 mile border, and bilateral relations between the two have a direct impact on the lives and livelihood of millions of Americans, whether the issue is trade and economic reform, education exchange, citizen security, drug control, migration, entrepreneurship and innovation, or the environment. Mexico is the United States second largest export market, after Canada. The Merida Initiative is an unprecedented partnership between the United States and Mexico to address violence and criminality while strengthening the rule of law and the respect for human rights. This initiative aims to disrupt the capacity of organized crime to operate, to enhance the capacity of Mexico's government and institutions to sustain the law, to improve border management to facilitate legitimate

trade and movement of people while thwarting the flow of drugs, arms, and cash, and to build strong and resilient communities. Mexico remains a major transit country for cocaine and heroin, and a source country for heroin, marijuana, methamphetamine destined for the United States. Proceeds of illicit drug trade leaving the United States are the principal source of funds laundered through the Mexican financial system. Other significant sources of laundered funds include corruption, tax-evasion, influence peddling, kidnapping, extortion, intellectual property rights violations, human trafficking, and trafficking arms.

The U.S. Department of State warns United States citizens about the risk of travel to certain places in Mexico due to threats to safety and security posed by organized groups in the country. United States citizens have been the victims of violent crimes, such as homicide, kidnapping, carjacking, and robbery by organized criminal groups in various Mexican states. Gun battles between criminal organizations or with Mexican authorities have taken place in towns and cities in many parts of Mexico and have occurred in broad daylight on streets and in other public venues. Many people killed in crime-related violence have themselves been involved in criminal activity, however there are innocent people who have also been killed. The number of U.S. citizens reported to the Department of State as murdered in Mexico was 100 in 2014, and 103 in 2015.

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Foreign Influence

6. *The Concern.* 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 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.

Conditions that could raise a security concern:

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;

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

7.(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; and

7.(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Condition that could mitigate security concerns:

8.(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

8.(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

a. The nature, extent, and seriousness of the conduct and surrounding circumstances;

b. The circumstances surrounding the conduct, to include knowledgeable participation;

c. The frequency and recency of the conduct;

d. The individual's age and maturity at the time of the conduct;

e. The extent to which participation is voluntary;

f. The presence or absence of rehabilitation and other permanent behavioral changes;

g. The motivation for the conduct;

- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be subject to foreign influence that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

The evidence shows that most of the Applicant’s family from Mexico, now reside in the United States. They are either legal residents, naturalized citizens, or waiting to become such. Furthermore, his parents-in-law, and sister-in-law in Mexico, who he visits periodically, or who visit him, do not pose a security risk. Under Guideline B, Disqualifying Conditions 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, 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; 7. (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; and 7.(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation apply. In this case, Mitigating Condition 8.(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 8.(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual also apply.

Applicant has made the United States his permanent home. He is married with three native-born children. His wife is a legal permanent resident who is waiting to become a naturalized citizen. All of his extended family members have come to the United States under legal processes. Applicant's employment, and his bank accounts are in the United States. He plans to buy a house here when he earns enough money, and plans to live here for the remainder of his life. Applicant has no loyalties to Mexico. Given these circumstances, Applicant is not a potential target for foreign influence. Accordingly, Guideline B (Foreign Influence) is found for the Applicant.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth above, when viewed under all of the guidelines as a whole, supports a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented. It does mitigate the negative effects of his foreign influence and the effects it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1		For the Applicant.
Subpara.	1.a.	For the Applicant.
Subpara.	1.b.	For the Applicant.
Subpara.	1.c.	For the Applicant.
Subpara.	1.d.	For the Applicant.
Subpara.	1.e.	For the Applicant.
Subpara.	1.f.	For the Applicant.
Subpara.	1.g.	For the Applicant.

DECISION

In light of all 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 the Applicant.

Darlene Lokey Anderson
Administrative Judge