



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



In the matter of:

ISCR Case No. 15-07319

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

June 16, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by his sister's citizenship and residence in the Philippines; his mother's residence in the Philippines; and his property located in the Philippines. National security eligibility is granted.

Statement of the Case

On July 29, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on August 29, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 17, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on January 17, 2017, scheduling the hearing for February 6, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection, and Hearing Exhibit (HE) I for Administrative Notice. (Tr. 12-14.) Applicant testified on his own behalf. Applicant presented three documents, which I marked Applicant's Exhibits (AE) A through C, and admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 14, 2017.

Procedural Rulings

1. At the hearing, the Government requested I take administrative notice of certain facts relating to the Philippines. Department Counsel provided a seven-page summary of the facts, supported by five Government documents pertaining to the Philippines, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

2. On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing the "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position."¹ The National Security Adjudicative Guidelines (hereinafter "adjudicative guidelines" or "AG"), which are found at Appendix A to SEAD-4, are to be used in all security clearance determinations made on or after June 8, 2017.² In light of this explicit direction and absent lawful authority to the contrary, I have applied the adjudicative guidelines.³ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).⁴

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.b, and 1.c. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 63-year-old employee of a defense contractor. He has been employed in the same position with various defense contractors since 2005. He served 20 years on active duty in the Navy and 10 years in the Navy Reserve. He retired from

¹ SEAD-4, ¶ B, *PURPOSE*.

² SEAD-4, ¶¶ C, *APPLICABILITY*; E (at 1 and 8), *POLICY*; and F, *EFFECTIVE DATE*.

³ Nonetheless, I have considered the previous version of the adjudicative guidelines and my ultimate decision in this case would have been the same under the previous guidelines.

⁴ See also ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (when the guidelines were last revised, the Board stated the following, "Quasi-judicial adjudications must be made within the bounds of applicable law and agency policy, not without regard to them.")

Navy service in April 2014. He is married and has three children. (GE 1; GE 2; AE B; AE C; Tr. 17-25.)

Applicant was born in the Philippines. He lived there with his family until the age of 29. In 1983 he was sponsored by his brother to immigrate to the United States. He legally entered the United States in October 1983. In 1984, he joined the U.S. Navy. He joined the Navy so that his wife and child could obtain green cards and immigrate as U.S. permanent residents. Applicant was naturalized as a U.S. citizen in 2003. His wife and oldest child are Philippine citizens, but recently applied for U.S. citizenship. They reside with Applicant in the United States. His two younger children are natural-born U.S. citizens. Applicant's immediate family members are entrenched in the United States and do not wish to return to the Philippines to live. (GE 1; GE 2; Tr. 20-26, 40.)

Applicant has nine siblings. All but one sister are residents of the United States. That sister is a citizen and resident of the Philippines. She is 65 years old. She is a homemaker and is supported by her husband, who runs a private construction supply business. She cares for Applicant's 90-year-old mother, who also resides in the Philippines. His mother is a U.S. citizen and lived here for 18 to 20 years, but returned to the Philippines when Applicant's father, now deceased, fell ill. Applicant speaks to his sister and mother by phone, typically once every month. Applicant travels to the Philippines approximately every two-to-three years to visit them. He last visited them in 2012. (GE 1; GE 2; Tr. 28-35.)

In 2012 Applicant's wife inherited a property in the Philippines from her parents, valued at approximately \$20,000. It is titled in both Applicant's and his wife's names. His wife's sister and her family reside in the home rent free. Applicant and his wife pay the property tax. Applicant is not willing to sell this property. (GE 1; GE 2; Tr.36-37.)

Applicant owns a home in the United States, but owes more on the mortgage than the home is worth. He has a 401(k) savings plan valued at approximately \$17,000. He testified he is loyal to the United States and that the Philippines is "not a place for [him] anymore." (Tr. 40, 49.)

Applicant presented one letter of recommendation from his manager. It indicated that Applicant has "faithfully discharged his duties and responsibilities," and his drive, professionalism, and personal integrity have earned high praise from leaders. (AE A.)

The Philippines is a multiparty, constitutional republic with a bicameral legislature. However, there is widespread official corruption and abuse of power. Significant human rights problems are pervasive, including extrajudicial killings and enforced disappearances undertaken by security forces, insurgents, and suspected vigilante groups. Additionally, long-running conflicts between the government and Muslim separatist groups displace civilians and cause the deaths of security forces. Terrorist activities against civilian targets in metropolitan areas include dozens of small arms and improvised explosive device (IED) attacks, kidnappings for ransom, and extortion efforts by suspected members of terrorist groups. (HE I.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant 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." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline 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. Four 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;
- (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; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's sister is a citizen and resident in the Philippines; his mother resides in the Philippines; and his largest asset is the property that he owns jointly with his wife in the Philippines. AG ¶¶ 7(a), 7(e), and 7(f) 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. I am satisfied that the activities of insurgent and terrorist groups, the risks of kidnapping by criminal elements, and the human rights violations in the Philippines are sufficient to establish the “heightened risk” and the potential conflict of interest in AG ¶ 7(b). The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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

(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.

Applicant served in the U.S. Navy from 1984 to 2014. He became a U.S. citizen in 2003, when he decided that he no longer wished to return to the Philippines to live. His wife and children are entrenched in U.S. society. All but one of his siblings live in the United States. His sister and mother in the Philippines are not connected to the government of the Philippines or employed in industry there. He owns property in the United States, although he does not have equity in it. He has some retirement savings here. While the value of the property in the Philippines is substantial, when compared to his other assets, it is of routine nature and unlikely to result in a conflict that could influence, manipulate, or pressure Applicant. In this case, there is no concern about potential conflict of interest, because the Applicant’s deep and longstanding relationships and loyalties in the United States show that he would resolve any conflict of interest in favor of the U.S. interest.

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 national security eligibility 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant honorably served 30 years in the U.S. Navy. He performs well at his job for a government contractor. While he was born in the Philippines, he is an American by choice. He has been residing in the United States for more than 33 years. His closest familial ties are with his immediate family, all of whom are U.S. residents. His remaining contacts in the Philippines are routine in nature and pose little risk. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

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 eligibility for access to classified information and/or to hold a sensitive position. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge