



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08696
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/14/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate the heightened security concerns raised by her familial connections to Libya. Clearance is denied.

Statement of the Case

On May 20, 2016, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the foreign influence guideline. Applicant answered the SOR and requested a hearing to establish her eligibility for a security clearance.

On April 4, 2017, a date mutually agreed to by the parties, the hearing was held. Applicant testified and the exhibits offered by the parties were admitted into the record.¹ The transcript of the hearing (Tr.) was received on April 13, 2017.

¹ Government Exhibits 1 – 3; Applicant's Exhibits A – L. Applicant's relevancy objection to Exhibit 3 was overruled, but considered in assessing the weight to give the exhibit. Correspondence, sponsorship information, withdrawal notice by Applicant's former counsel, the notice of hearing, and case management order are attached to the record as Appellate Exhibits I – V.

Findings of Fact²

Applicant, 32, was born in Libya. When she was 11 years old, Applicant and her family immigrated to the United States. Applicant, her mother, and her two siblings are U.S. citizens and they reside in the United States. They all live relatively close to one another. Applicant's brother has been working as a cleared U.S. Government contractor since approximately 2009. Applicant started working for the same employer that employs her brother in 2015. She recently received a job promotion, which increased her annual salary from \$57,000 to about \$70,000.³

Applicant's only immediate family in Libya is her father. Applicant's father was unable to secure gainful employment in the United States and returned to Libya sometime in the mid to late 1990s. He was employed in the oil and gas industry in Libya, and for a time worked for the Libyan ministry of oil and gas. He is currently working in Libya as a private consultant.

After graduating from high school, Applicant left the United States and moved overseas to live with her father. Her parents had divorced, and she left the United States to care for her father. Applicant lived with her father from about 2004 to 2014. They lived in Country X from 2004 to 2008, residing in an apartment provided by her father's employer. They then lived in Libya from 2008 to 2014 in the house her father owns. She left her father's home in Libya for "safety reasons." (Exhibit 2 at 4)

Applicant testified that her father is looking to move to the United States, and is in the process of liquidating his assets in Libya. He travels frequently to the United States to visit Applicant and the rest of the family. Applicant is in daily contact with her father. His U.S. green card has expired.⁴

Applicant also testified that she has no interest in returning to Libya. She plans on remaining in the United States, and identifies herself to others as an American. She surrendered her Libyan passport to her facility security officer and is willing to renounce her Libyan citizenship. She does not hold any foreign property or assets, and has no financial interests in or ties to Libya. Her close circle of friends are mostly made up of cleared federal contractors and employees. A number of persons, both co-workers and longtime friends, provided letters attesting to Applicant's honesty, trustworthiness, and reliability. Her supervisor submitted a letter, noting Applicant's strong work ethic and favorable work contributions.⁵

² The information herein is generally extracted from Applicant's security clearance application (Exhibit 1), security clearance interview (Exhibit 2), Answer, and the cited portions of the record.

³ Tr. 25-33; Exhibits A – E, I – L. The SOR alleges that Applicant's relationship with her father and siblings raises a foreign influence security concern. The evidence does not support the contention that Applicant's relationship with her siblings raises such a concern. Accordingly, SOR 1.b and 1.c are decided in Applicant's favor and will not be further discussed.

⁴ Tr. 26-38.

⁵ Tr. 36-39, Exhibit G.

*Administrative Notice – Libya*⁶

In 2011, Mu'ammar al-Qadhafi's 42-year rule of Libya ended. Since then, Libya has been mired in conflict. A 2015 U.N.-brokered agreement holds much promise in bringing peace and stability to the country, but the "security situation in the country remains unpredictable and unstable."⁷

The current U.S. State Department travel warning for Libya reflects that "Tripoli and other cities have witnessed fighting between armed groups and government forces as well as terrorist attacks." Violent extremist activity in Libya remains high, and extremist groups have made threats against U.S. government officials, citizens, and interests. Notwithstanding recent military successes, ISIL (Da'esh) maintains a strong presence in the country. Due to the security situation on the ground, the U.S. Embassy suspended all its operations in Libya in July 2014.

The current U.S. State Department Human Rights report on Libya notes serious human rights problems. The report states that "impunity was a severe and pervasive problem" in Libya. And that, due to its limited reach and resources, the Libyan government did not take steps to investigate, prosecute, and punish those who committed human rights abuses and violations. The report also states that the Libyan government did not maintain control over the "Libyan National Army."⁸

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 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 on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4).⁹

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information "upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

⁶ See generally Exhibit 3 and the following U.S. Government publications, which are attached to the record as App. Exh. VI and are publically available on the State Department's and Central Intelligence Agency's websites (state.gov; cia.gov): State Department *Travel Warning Libya*, updated, Jan. 27, 2017; State Department's Human Rights Report on Libya 2011, 2014, and 2016 (Executive Summaries); State Department's Office of the Historian, *A Guide to the United States' History of Recognition, Diplomatic, and Consular by Country, since 1776: Libya*; CIA World Factbook: Libya.

⁷ State Department Travel Warning at 1.

⁸ State Department 2016 Human Rights Report at 1-2.

⁹ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14.¹⁰ Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a "substantial evidence" standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive, ¶ E3.1.32.1.

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹⁰ See *also* ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017) (favorable decision reversed because Department Counsel failed to present evidence to substantiate allegation that was denied by applicant); ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (rejecting Department Counsel's argument that an adverse decision can be based solely on non-alleged conduct).

Analysis

Guideline B, Foreign Influence

The foreign influence security concern is explained at AG ¶ 6:

Foreign contacts and 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.

A person is not automatically disqualified from holding a security clearance because they have relatives living in a foreign country. Instead, in assessing an individual's potential vulnerability to foreign influence, a judge considers the foreign country involved, the country's human rights record, and other pertinent factors.¹¹

In assessing the security concerns at issue, I considered all pertinent disqualifying and mitigating conditions, including the following:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, . . . if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

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;

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 . . . 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;

¹¹ See *generally* AG ¶ 6. See also ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

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; and

AG ¶ 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

An applicant with foreign relatives faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required “to sever all ties with a foreign country before he or she can be granted access to classified information.”¹² However, what factor or combination of factors will mitigate security concerns raised by an applicant with relatives in a foreign country is not easily identifiable or quantifiable.¹³

Here, Applicant’s strong relationship with her father is self-evident. She left the United States after graduating from high school to care for her father, and lived with him for the next decade or so. She lived in Libya caring her father even after the security situation in Libya spiraled out of control. She finally left Libya in 2014, which coincided with the outbreak of major political violence and the commission of serious human rights abuses, including the targeting of civilians, by pro and anti-government forces.¹⁴

In short, Applicant’s relationship with her father, coupled with the chaotic and dangerous security situation in Libya, places upon her a *very heavy burden* in mitigating the foreign influence security concerns.¹⁵ In mitigation, I have considered Applicant’s relatively strong ties to the United States. She went to elementary and high school in the United States. Her immediate family members, other than her father, live relatively close to her in the United States. She also has a strong network of close friends in the United States, and has earned the trust and respect of her employer.

Additionally, Applicant fully reported and openly discussed her foreign connections during the course of the security clearance process. Also, Applicant surrendered her Libyan passport and credibly testified about her willingness to renounce her Libyan citizenship.

At the same time though, Applicant’s relationship with her father remains rock solid and the threat that a foreign entity or group with interests adverse to the United States could attempt to influence her through this relationship remains. Applicant’s

¹² ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

¹³ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

¹⁴ State Department 2014 Human Rights Report at 1. See also Exhibit 2 (security clearance interview) at 4 (applicant states she left her father’s home in Libya in 2014 for “safety reasons.”)

¹⁵ ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017) (heightened level of scrutiny warranted when an applicant’s relatives reside in a country with an ongoing civil war and the presence of hostile forces).

connections to the United States and other favorable record evidence is insufficient to fully mitigate the security concerns raised by this serious security threat.¹⁶

However, this adverse security assessment is *not* a comment on Applicant's patriotism or loyalty. Instead, it is an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

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 (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to grant Applicant eligibility for access to classified information. Applicant's request for a security clearance is denied.¹⁷

Francisco Mendez
Administrative Judge

¹⁶ Specifically, I find that AG ¶¶ 7(a) and 7(b) apply. Although AG ¶¶ 8(b) and 8(e) have some limited applicability, these mitigating factors and other favorable record evidence (*see generally* AG ¶ 2(d)) are insufficient to mitigate the heightened security concerns at issue. I considered the previous version of the guidelines and the changes occasioned by the implementation of SEAD-4. However, these changes did not significantly alter my analysis nor did it change my ultimate decision.

¹⁷ I also considered the exceptions listed in SEAD-4, Appendix C. Applicant's unique qualifications, innate abilities and talents, and hard work ethic would clearly serve to benefit the United States. However, in light of the heightened security concerns raised by Applicant's present circumstances, I do not find that any of the listed exceptions are warranted. *See generally* SEAD-4, ¶ E.3 and AG ¶ 2(h); *contrast with* ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011) (under previous version of the guidelines, judges had "no authority to grant an interim, conditional or probationary clearance.")