DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-00433
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Jacob Ranish, Esq.

01/31/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is sufficient to mitigate the foreign influence and foreign preference security concerns. There is no evidence to show that the Dominican Republic (DR) poses a national security risk. Applicant's participation in the DR's Air Force Reserve (DRAF) after becoming a naturalized U.S. citizen does not present a national security concern. Moreover, he renounced his DR citizenship. It is unlikely that Applicant will be placed in a position of having to choose between the interests of a foreign individual or government and the interest of the United States. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 9, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guidelines B (foreign influence), C (foreign preference), and E (personal conduct) on September 21, 2015. Applicant answered the SOR on October 15, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me and issued a notice of hearing on December 8, 2016, setting the hearing for January 25, 2017. At the hearing, the Government offered two exhibits (GE 1 and 2). GE 1 was admitted without objection. GE 2 was marked and made part of the record, but it was not admitted as evidence. Applicant testified and submitted 15 exhibits, marked as Applicant's exhibits (AE) 1 through 15. AE 1 (a request for administrative notice of facts concerning the DR) was marked and made part of the record, but not admitted as evidence. AE 2 through 15 were admitted without objections. DOHA received the hearing transcript (Tr.) on February 2, 2017.

Procedural Issues

Applicant requested I take administrative notice of certain facts concerning the DR. Department Counsel did not object and I have taken administrative notice of the facts contained in the request. (AE 1) The facts are summarized in the written request and will not be repeated verbatim in this decision. I note that the relations between the DR and the United States are excellent. Both nations work closely in many matters including illegal drug interdiction, security, trade agreements, education, and health care. There is no evidence to show that the DR poses a security risk to the United States.

On June 6, 2016, Department Counsel moved to amend the SOR by adding subparagraph 1.b, alleging that after becoming a U.S. citizen, Applicant maintained a passport from the DR until January 2016. (Hearing Exhibit (HE) 1) Applicant denied the amended allegation on June 29, 2016. (HE 2) Department Counsel's June 2016 motion also withdrew SOR paragraphs 3 and 3.a. I granted the motion as requested.

On April 23 and 24, 2017, Applicant submitted motions (HE 4 and 5) requesting that I consider the allegation in SOR 1.b moot because of the anticipated *National Security Adjudicative Guidelines* (AG), promulgated by Security Executive Agent Directive (SEAD) 4, to become effective June 8, 2017. On April 24, 2017, Department Counsel moved to withdraw SOR 1.b. (HE 3) I granted the motion as requested. Thus, Applicant's motions are moot and they will not be addressed further in my decision.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 2.f through 2.h. He denied all of the remaining SOR allegations (¶¶ 1.a and 2.a through 2.e). His SOR and hearing admissions are incorporated into my findings of fact. After a thorough review of the record evidence, and having considered Applicant's testimony and his demeanor while testifying, I make the following additional findings of fact:

Applicant is a 33-year-old hardware engineer employed with a federal contractor since September 2014. He has never been married and has no children. He was born, raised, and educated in the DR. His father, 60, was a pilot in the DRAF and retired as a general officer in 2009. Applicant talks to his father on a frequent basis, but claimed they are no longer close because his father left his mother for another woman. His

father is a resident of the DR and a dual citizen of the United States and the DR. (AE 3) Applicant grew up in a DR military neighborhood.

Applicant's mother is a retired officer of the DRAF. She practiced as a dentist for about 10 years. She immigrated to the United States in 2011-2012, and is currently a U.S. permanent resident alien. She is in the process of applying for U.S. citizenship. Applicant has two brothers: one is a naturalized U.S. citizen residing in the United States. (AE 8) The second brother was born in the United States, but has never lived in the United States. (AE 9) He works for a private company in the DR. While his mother and father were together, Applicant provided his parents with about $6,000 in yearly financial support.

According to Applicant, his grandmother sponsored him into the United States. He entered the United States for the first time in 1993, and received his U.S. permanent residency in 1994. Thereafter, he frequently travelled back and forth between the United States and the DR.

Applicant graduated from high school in the DR. At age 18, he joined the DRAF in 2002. He testified he joined the Air Force to earn money to pay for college. He testified he served on active duty for about four months during basic training. Thereafter, he attended college, drilled during the weekends, and participated on active duty training about twice a year. He was commissioned as a DRAF officer in 2003. Applicant received his bachelor's degree from a DR college in 2006. He worked for a U.S. federal contractor manufacturing electronics in the DR between 2006 and 2008. Applicant immigrated to the United States to work with federal contractors in positions related to his job in the DR in October 2008. (Tr. 20-21) He completed a master's degree in technology from an American university. In September 2014, his current employer and security sponsor hired Applicant.

Applicant become a naturalized U.S. citizen in August 2012. He renounced his DR citizenship and surrendered his DR passport in August 2014. (AE 7) He served in the DRAF until December 2015 when, as a captain, he resigned his commission. (AE 2) He had to ask his father for assistance to expedite his resignation because it was taking too long. He testified that he renounced his DR citizenship and resigned his DRAF commission to eliminate any possible security issues or conflict of interest allegations. He receives no pension or benefits from the DR government or its armed forces. Applicant explained that he elected to become a U.S. citizen because of the quality of life and financial opportunities the United States offers. His loyalty is to the United States.

Applicant last visited the DR in 2015. Before then, he visited the DR on a yearly basis. He still has friends in the DR and in the Air Force with whom he maintains infrequent contact. He maintains a bank account in the DR with about $1,000 that he used for his travel convenience. He intends to close it in the near future. Applicant's salary is about $86,000 a year. Other than the bank account, Applicant testified he has

no other financial or proprietary interests in the DR. He travels using his U.S. passport since 2012, and is registered to vote in the United States.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Security Executive Agent implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG. I decided this case under the current AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

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 the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest 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.

"[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

The foreign influence security concern is explained at 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.[1]

Individuals are not automatically disqualified from holding a security clearance because they have connections and contacts in a foreign country. Instead, in assessing an individual's potential vulnerability to foreign influence, an administrative judge must take into account the foreign government involved; the intelligence-gathering history of that government; the country's human rights record; and other pertinent factors.[2]

In assessing the possible security concern raised by Applicant's foreign contacts, I have considered the following disqualifying and mitigating conditions:

> 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;

[1] ISCR Case No. 09-07565 at 3 (App. Bd. Jul. 12, 2012) ("As the Supreme Court stated in *Egan*, a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, such as the foreign residence of an applicant's close relatives.") (internal citation omitted).

[2] 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(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, group, organization, or government and the interests of the U.S.;
>
> AG ¶ 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.

An individual with family members and other connections in a foreign country 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."[3] However, what factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable.[4]

Applicant entered the United States in 1993 and received his permanent resident alien card (green card) in 1994. He then travelled frequently between the two countries. After working during two years for a federal contractor manufacturing products in the DR, Applicant immigrated to the United States to work for federal contractors in 2008, and became a U.S. naturalized citizen in 2012. Applicant's father, mother, and one brother are naturalized U.S. citizens. His other brother was born in the United States. His father and the brother born in the United States are residents of the DR. His mother and other brother are residents of the United States.

I note that there is no evidence to show the DR is known for targeting U.S. citizens to obtain classified or sensitive information, or is associated with a risk of terrorism. (The Government did not allege disqualifying condition AG ¶ 7(a).) The relations between the Dominican Republic and the United States are excellent. Both nations work closely in many matters including illegal drug interdiction, security, trade agreements, education, and health care. There is no evidence to show that the Dominican Republic poses a security risk to the United States.

The issue in this case is whether Applicant's relatives and contacts in the DR could result in a divided allegiance, or whether they create circumstances in which Applicant may be manipulated or induced to help a foreign person, group, or organization in a way inconsistent with U.S. interests. The record lacks such evidence.

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

[4] ISCR Case No. 11-12202 at 5 (App. Bd. Jun. 23, 2014).

I considered that Applicant's father (general officer) and his mother (officer) retired from the DRAF, and that Applicant served in the DRAF for about 13 years and held the rank of captain. Applicant was a reservist in the DRAF and attended drills during weekends. His full-time job was working for federal contractors manufacturing products in the DR between 2006 and 2008. Because of his expertise, federal contractors hired him to work for in the United States starting in 2008. After Applicant because aware of the possible security concerns raised by his dual citizenship and service in the DRAF, he renounced his DR citizenship and resigned his DRAF commission.

Applicant considers the United States his country and seeks the quality of life and opportunities that the United States offers. He expressed his loyalty and understanding of his fiduciary obligations to the United States. He would like to continue to serve the U.S. and work for federal contractors. Additionally, Applicant has developed deep and long-lasting bonds in the United States, as evidenced by his mother's status as a permanent alien resident in the United States seeking her naturalization. Applicant's brother is also a permanent alien resident in the United States and seeks his naturalization. Applicant's allegiance to the United States was corroborated by his renunciation of his DR citizenship, surrendering his passport, and resigning his commission.

Accordingly, after a complete and thorough review of the record evidence, and while remaining mindful of my duty to resolve any unmitigated doubt in favor of protecting national security, I find that Applicant mitigated the security concerns raised by his connections to and contact with his family in the DR and prior military service in that country.

Guideline C, Foreign Preference

The foreign preference security concern is explained at AG ¶ 9:

> When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself;* the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

Applicant served as an officer in the DRAF between 2002 and 2015. He was a captain at the time he resigned his commission in 2015. He served in the DRAF after becoming a naturalized U.S. citizen in 2012.

In assessing the possible security concern raised by Applicant's foreign preference, I have considered the following disqualifying and mitigating conditions:

> AG ¶ 10(d): participation in foreign activities, including but not limited to: (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization . . . .
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> AG ¶ 11(a): the foreign citizenship is not in conflict with U.S. national security interests;
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> AG ¶ 11(b): dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;
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> AG ¶ 11(c): the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;
>
> AG ¶ 11(d): the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen;
>
> AG ¶ 11(e): the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern; and
>
> AG ¶ 11(t): the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk.

Considering the evidence as a whole, I find that Applicant mitigated the foreign preference security concerns and that all of the above mitigating conditions are applicable. I considered that Applicant served about three years in the DRAF as a reservist after he became a naturalized U.S. citizen. However, after becoming aware of the security concerns raised by both his DR citizenship and officer commission, he renounced his citizenship in 2014, and resigned his commission in 2015.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of these factors were addressed under those guidelines, but some warrant additional comment.

Applicant is a 33-year-old employee of a federal contractor. He has worked for federal contractors since 2006, and for his employer since 2014. Considering the record as a whole, Applicant's evidence is sufficient to mitigate the foreign influence and foreign preference security concerns. The DR poses a low national security risk. Applicant's participation in the DRAF after becoming a naturalized U.S. citizen, and while processing the resignation of his commission, does not present a national security

concern. He renounced his DR citizenship. It is unlikely that Applicant will be placed in a position of having to choose between the interests of a foreign individual or government and the interest of the United States.

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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.h:	For Applicant
Paragraph 3, Guideline E:	WITHDRAWN
Subparagraph 3.a:	Withdrawn

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for a security clearance. Clearance granted.

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JUAN J. RIVERA
Administrative Judge