



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



In the matter of:)
)
) ISCR Case No. 15-05886
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has spent most of his career living and working abroad. He has mitigated the security concerns raised by his foreign-based assets and his friendships with individuals who are citizens and residents of Ukraine. Clearance is granted.

Statement of the Case

On March 25, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant timely answered the SOR and requested a decision on the written record. The Government submitted its case, called File of Relevant Material (FORM), to Applicant on June 1, 2016. Applicant received the FORM on June 18, 2016, and provided a response. The documents offered by the Government are admitted to the record as Government's Exhibits (GE) 1 through 4. The document offered by Applicant is admitted as Applicant's Exhibit (AE) A.

Procedural Matters

Implementation of Revised Adjudicative Guidelines

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Ukraine. Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below.²

Findings of Fact

Applicant, 61, is an accountant. Since approximately November 2004, he has worked in the international development sector. He has worked on contracts in the Middle East, South Asia, and Africa. Applicant has applied for a security clearance, his first, in anticipation of a project in South Asia. On his security clearance application and in his answer to the SOR, Applicant provided detailed disclosures about his work history, foreign assets, and foreign contacts.

Applicant is a U.S. citizen by birth. He grew up in the United States, completing his education and obtaining his professional certification. Applicant started his career in the corporate sector, which led him to Germany in 1986 where he lived and worked in executive-level positions for the next 15 years. He opened a German-based bank account. In 1990, Applicant purchased a home in a German city with a large U.S. military presence and large population of U.S. citizens. Working and residing in Germany, Applicant complied with laws regarding taxation and compulsory contributions to the social security system. Since 1979, the United States and Germany have had an agreement regarding social security benefits, improving social security protection for individuals who have worked in both countries. As a U.S. citizen working in Germany for

² The Government's administrative notice summary and attached documents are admitted to the record as HE III.

more than five years, Applicant is entitled to receive benefits from the German social security system.³

At the time Applicant completed his security clearance application, he disclosed that his German bank account contained over \$730,000. In his SOR answer, Applicant explained that for the last 15 years, 70% of this balance has been held in financial securities including money markets, certificates of deposit, and mutual funds that have performed well over the years. Also, he has very low living expenses while working on international development projects, allowing him to save the majority of his salary. Applicant's home in Germany is worth approximately \$190,000. The property remains empty when Applicant is not resting there between international assignments.

In February 2004, Applicant's employment led to a collaboration between his U.S.-based company and an entity in Ukraine. The government of the Ukraine is currently embroiled in conflicts with separatist groups for control over certain areas of the country and with Russia over its annexation of the Crimean Peninsula. While the elected government controls most of the country, separatists have gained control over areas in the eastern region of the country. Through work, Applicant became friends with a woman, a citizen and resident of Ukraine, who worked with him as a translator. Over time, Applicant came to know the woman's sister, who works for a travel company, and brother-in-law, who works for a business school.

Over the years, Applicant has maintained contact with the woman, who now works for a Danish company that imports water pumps, and with her family members. He visits them in the Ukraine annually as his schedule permits. The U.S. State Department advises U.S. citizens to avoid separatist-controlled areas of the Ukraine, where separatist groups have detained and kidnapped U.S. citizens. Applicant's friends live and work in Ukraine's capital city, which is controlled by the government. The capital is nearly 1,000 kilometers away from the separatist-controlled areas. While the Ukrainian government has committed human-rights violations against its citizens, the focus appears to be on political dissidents. The record does not contain any evidence to suggest that Applicant's friends are involved in any political activity. There is no evidence that Applicant travels to separatist-controlled areas or the Crimea Peninsula.

When not working overseas, Applicant resides in a property he owns jointly with his brother in the United States, which he considers home. Applicant maintains all of his medical relationships in the United States. In addition to his German-based assets, Applicant has retirement savings in the United States from his jobs with U.S. companies.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

³ https://www.ssa.gov/international/Agreement_Pamphlets/germany.html

disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 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 safeguard 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 EO 10865 provides that adverse 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

"[F]oreign contacts and interests, including . . . financial and property interests, are a national security concern if they result in a divided allegiance [or] . . . 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." Applicant maintains close relationships with individuals who are residents and citizens of Ukraine. Given the ongoing conflicts in Ukraine, between the elected government and separatist groups and the potential threats against

U.S. citizens, Applicant's relationships and presence in the country creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁴ Also, Applicant's \$900,000 in German-based assets are substantial and could subject him to a heightened risk of foreign inducement or exploitation or personal conflict of interest.⁵

However, the evidence in the record mitigates the concerns about Applicant's ongoing friendships with three Ukrainian nationals. Applicant's Ukrainian friends are not involved in professions or activities that are likely to place Applicant in a position of having to choose between foreign interests and U.S. interests.⁶ Furthermore, there is no indication that Applicant travels to areas in the Ukraine that increase his exposure to separatist groups that may have anti-American sentiments. The concerns raised by Applicant's German-based assets are also mitigated. Applicant accumulated these assets in the normal course of professional life lived abroad. His German-based assets are maintained as a convenience, not as an act of foreign preference. Given the long standing relationship between Germany and the United States, it is unlikely that Applicant's financial interests in that country will result in a conflict of interest. Furthermore, it is unlikely that the German government or entities operating in that country will use Applicant's financial assets as tools to effectively influence, manipulate, or pressure Applicant.⁷

Applicant's entitlement to social security benefits from the German government are not disqualifying as his coverage by and contributions to the system are in compliance with an agreement between the United States and Germany.

Based on the record, I have no doubts about Applicant's ability to protect and handle classified information. In reaching this conclusion, I have considered the whole-person factors in AG ¶ 2(d). In mitigating the foreign influence concerns, Applicant has demonstrated that he understands the importance of disclosing foreign contacts and financial interests. During this adjudication, Applicant has disclosed, in detail, his foreign contacts, assets, and work history. I am satisfied that he will continue to handle these reporting requirements properly as a clearance holder.

⁴ AG ¶ 7(a) contact, regardless of method, with a foreign . . . friend . . . 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.

⁵ AG ¶ 7(f) substantial . . . financial, or property interests in a foreign country . . . that could subject the individual to a heightened risk of foreign inducement or exploitation, or personal conflict of interest.

⁶ AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or, the position or activities of those persons in that country are such that is unlikely the individual will be placed in a position of having to choose between the interest of a foreign individual, group, organization, or government and the interests of the United States.

⁷ AG ¶ 8(f) the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in a conflict and could not be used to effectively influence, manipulate, or pressure the individual.

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, Foreign Influence: FOR APPLICANT

Subparagraphs 1.a – 1.d: For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge