



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



In the matter of:)
)
) ISCR Case No. 15-08380
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq. & Tovah Minster, Esq., Department Counsel
For Applicant: Mark S. Zaid, Esq.

06/26/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the security concerns under foreign influence, foreign preference, personal conduct, and handling protecting information. Eligibility for access to classified information is granted.

Statement of the Case

On December 8, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence), C (foreign preference), E (personal conduct), and K (handling protected information). The action was taken 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on February 21, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 8, 2017, scheduling the hearing for February 8, 2018.

I convened the hearing as scheduled. The Government's and Applicant's exhibit lists were appended to the record as Hearing Exhibits (HE) I and II. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, called three witnesses, and submitted Applicant's Exhibits (AE) A through R, which were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on February 20, 2018.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 3.a, 3.b, 4.a, 4.b, 4.c, and 4.d, and denied ¶ 2.a. He is a 52-year-old native-born U.S. citizen, residing in Belgium since 2001. He is married to a Danish citizen. He has three minor children, who were born in Belgium and are dual U.S. and Danish citizens. He graduated from a foreign high school, and he obtained a bachelor's degree from a U.S. university in 1988 and a master's degree from a foreign university in 1990.²

Upon completing his graduate studies, Applicant returned to the United States. He worked as a fellow and a contractor for the U.S. Government, and was sent overseas between 1991 and 1997. Since October 1998, he has worked in various international staff positions as a U.S. direct hire at NATO in Belgium. He has been on an indefinite duration contract since 2005, and he intends to remain employed with NATO until he retires. He first obtained a security clearance as an intern in 1986. He then reobtained and has held one since 1991.³

Applicant's father is a 95-year-old Romanian-born U.S. citizen, residing in Germany. They speak to each other by telephone daily. He fled Romania as a political refugee in 1948, after the Soviet-installed communist regime took over the country. He worked for several years in Austria for the U.S. military, where he met and married Applicant's mother. They immigrated to the United States. Here, he worked for 20 years as a U.S. civil servant. He was then transferred to Germany, where he worked until he retired. He continued to work as a U.S. civil servant in Germany until his second retirement in the early 1990s. His commitment to U.S. values are the ideals that were instilled in Applicant as a child.⁴

After Applicant's father fled Romania as a defector, the communist government passed a law requiring that individuals such as him return to communist Romania by 1955, or they would be stripped of their Romanian nationality. Applicant's father did not

² Applicant's response to the SOR; Tr. at 126, 132-133, 141-142; GE 1; AE G.

³ Tr. at 54-55, 57, 84-91, 103-105, 117, 125-126, 133-136, 142-144; GE 1; AE B, C, F, G, H, I, O, P, Q.

⁴ Tr. at 89, 91-94, 119, 120-125; GE 1; AE G, R.

return, and he understood, as a result of this law, that he was only a U.S. citizen. After the democratic changes to Romania in the 1990s, he took no action concerning his Romanian citizenship. He felt that he was a Romanian citizen by birth, and it was illegally taken away from him by the communist regime. In 2010, he learned that the communist law was declared null and void by the Romanian government. He then went to the Romanian consulate in Germany and made a notarized request for the Romanian authorities to clarify his Romanian citizenship status. He was informed that according to Romanian law, since he was born in Romania, he was a Romanian citizen as of his birth date.⁵

Applicant subsequently learned that through his father's Romanian citizenship, he was considered a Romanian citizen. In addition to wanting to clarify his own Romanian citizenship status, Applicant felt a family obligation to do so. He considered it a symbolic acknowledgment, as he did not intend to assume any obligations or responsibilities as a Romanian citizen. He was told he did not have to commence any formal citizenship acquisition process. Rather, he gave a power of attorney to an attorney acquaintance in Romania, along with his father's birth certificate, the response from the Romanian authorities confirming his father's Romanian citizenship, and his translated and notarized U.S. birth certificate. He asked his acquaintance to represent him in clarifying his Romanian citizenship and obtaining his Romanian birth certificate.⁶

Applicant obtained a Romanian birth certificate, which conveys that he is a Romanian citizen under Romanian law, given that he is the son of a Romanian citizen by birth. He did not take an oath to Romania. He has not exercised any type of privilege or benefit of Romanian citizenship. He has never voted in Romanian elections. He has never possessed nor has any intentions to obtain a Romanian passport, and solely possesses a U.S. passport. He understood that he was duty-bound to inform the U.S. Mission to NATO about his acquisition of a Romanian birth certificate and his Romanian citizenship, so he reported it in September 2012.⁷

In October 2012, Applicant completed a security clearance application. In response to section 10, which inquired whether he held or ever held dual or multiple citizenships, he marked "Yes." He acknowledged that he was a dual citizen, and indicated that he was a U.S. citizen since October 1965 and he was also a Romanian citizen since June 2012. He provided the following comment:

Non-voluntary acquisition of Romanian citizenship as of June this year. As a result of my father -a naturalized U.S. citizen since the 1950s- having recently been "confirmed" as a Romanian citizen by birth without having asked for re-naturalization (originally acquired by birth in 1923). Direct descendants of Romanian citizens are automatically treated as such, although not born in Romania. Birth certificate issued to me. I have not

⁵ Tr. at 94-96; GE 5.

⁶ Tr. at 96-106, 139; GE 1, 4, 5; AE E.

⁷ Tr. at 96-106, 139; GE 1, 3, 4, 5; AE A, E.

acquired any official Romanian documentation related thereto, such as a passport or ID. . . . While a Romanian birth certificate was issued to me, I have taken no action, nor plan to in the future, exercise any rights stemming therefrom such as obtain official Romanian documentation (passport, ID, driver's license, etc.), seek any positions or political offices in Romania, vote in Romanian elections, or accept any benefits (such as social, medical, educational or retirement) from the Romanian government.

Having learned that he was a Romanian citizen through his father, he understood that he automatically, and involuntarily, held Romanian citizenship.⁸

At hearing, he reiterated that he understood he acquired Romanian citizenship at birth, by being born to a Romanian citizen. He clarified that his "June this year" comment in his application referenced the date in which he acquired his Romanian birth certificate. He testified that he understood that the Romanian birth certificate he obtained simply confirmed his Romanian citizenship that he had acquired at birth. He testified that he did not intend to falsify, mislead, or omit information concerning his Romanian citizenship on his application. He did not seek advice from anyone about how to respond to this section in his application. He testified that his reporting of his Romanian citizenship to the U.S. Mission to NATO before he completed his application demonstrates that he did not intend to provide misleading information about his Romanian citizenship. He reiterated that he has no intent to exercise his Romanian citizenship, he does not possess a Romanian passport, and he is willing to renounce his Romanian citizenship if required.⁹

Applicant's spouse is a citizen of Denmark. She has not chosen to become a U.S. citizen because doing so would cause her to forfeit her Danish citizenship. She has worked for the Danish government since 1994, and had been seconded to the European Union for a number of years. She continues to hold a Danish security clearance. She expects to receive \$4,000 monthly in retirement benefits from the Danish government when she retires. Applicant met her in 1996 in Romania, when they both worked there. They have resided together in Belgium since 2001, and they married in 2003. Applicant has reported this foreign relationship to his security office since its inception. He has no intention of his family settling in Denmark upon their retirement.¹⁰

Applicant's one aunt in Romania died in 2015. He visits Romania once yearly. His aunt in Germany is 93 years old, and they speak telephonically every three months. He testified that he reports all foreign travel and he would report any blackmail attempts to his security office.¹¹

⁸ Tr. at 96-106, 137-140; GE 1; AE E.

⁹ Tr. at 96-106, 137-140; GE 1; AE E.

¹⁰ Tr. at 111-117, 133, 140-141; GE 1; AE G, I, J, K, L.

¹¹ Tr. at 119, 120-125; GE 1.

In 2013, Applicant and his spouse purchased their home in Belgium. Its value is approximately \$1 million. He has a personal checking account and three savings accounts for his children in Belgium, with a total value of around \$85,000. He has a checking account in Germany, and he has a quarter interest in his deceased mother's family home there, valued at approximately \$1 million. He inherited his father's home in Romania, and its value is approximately \$400,000. He testified that he has reported his foreign assets to his security office. He would be willing to sell his foreign properties and close his foreign bank accounts, if required.¹²

Applicant has a checking account in the United States, with a value of around \$4,000. He has extended family members in the United States, who he contacts two to three times yearly. He returns to the United States on either home leave with his family once every two years or for work-related reasons. As such, his children have visited the United States numerous times. He plans to move his family to the United States when he and his wife retire. Though he works for NATO on an indefinite duration contract, in which he attested his allegiance to NATO, Applicant maintained that he is loyal to the United States.¹³

While employed at NATO, Applicant had a total of 28 security violations from 1999 to April 2011. His violations involved failing to properly secure classified documents and computer diskettes with protected information, and improperly disposing of classified documents. All of the violations occurred in a closed, secure environment. In each instance, the NATO security office issued him a security violation form, which he signed and acknowledged. He admitted that he was negligent in his handling of NATO classified material, and testified that such violations were commonplace in the NATO environment in which he worked. For the first time, in May 2011, Applicant was administered a written warning by the U.S. Mission to NATO. He was admonished that future violations could have a consequence on his continued security clearance eligibility. He took the warning seriously and became more disciplined in his handling of classified material. He has not since had any security violations. He continues to take required annual security briefings, and he intends to remain diligent.¹⁴

Applicant's first witness formerly served in prestigious positions with the U.S. Government and held a security clearance for 47 years. He has known Applicant since 2002, and worked with him until he retired in 2017. He described Applicant as having unimpeachable and impeccable honesty and integrity. He attested that Applicant did not have any security infractions after the 2011 warning through his 2017 retirement, and that Applicant was personally committed to a zero-defects approach to handling classified material. He also testified that while Applicant is deeply committed to his work at NATO, he is loyal to the United States.¹⁵

¹² Tr. at 117-120, 125, 128-137, 142-144; GE 1; AE D, G.

¹³ Tr. at 117-120, 125, 128-137, 142-144; AE H.

¹⁴ Tr. at 106-111, 127, 138-139; GE 1, 2, 4; AE B, M, N, O.

¹⁵ Tr. at 23-49; AE P.

Applicant's second witness served in the U.S. military for 20 years until he retired. He also worked in prestigious positions with the U.S. Government, and most recently worked as a direct hire by NATO. He has held a clearance since 1999. He has known Applicant since 2012, has nearly daily contact with him, and has been his second line supervisor since 2016. He was aware of Applicant's prior security violations. He attested that Applicant had not had any violations since 2011 and was extraordinarily careful in handling classified information. He described Applicant as having an excellent reputation. He expressed no concerns regarding Applicant's undivided allegiance to the United States.¹⁶

Applicant's third witness has been his friend for 30 years. He attested that Applicant returns to the United States on home leave regularly. Both he and another character witness, who has known Applicant for 26 years, attested to Applicant's honesty and trustworthiness.¹⁷

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 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(a), 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 access to classified information will be resolved in favor of national security."

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

¹⁶ Tr. at 49-71; AE P.

¹⁷ Tr. at 71-84; AE R.

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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The security concern for foreign preference is set out in 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

(a) applying for and/or acquiring citizenship in any other country.

Applicant did not apply for or acquire his Romanian citizenship. He obtained his Romanian citizenship at birth, through his father's Romanian citizenship. Though he hired an attorney to ascertain the status of his Romanian citizenship and obtain a Romanian birth certificate that identified such citizenship, such steps were taken to clarify whether he was, in fact, already a Romanian citizen as a result of being born to one. I find that AG ¶ 10(a) has not been established.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Prior to completing his security application in October 2012, Applicant had already reported his Romanian citizenship to his security office. When he completed the application, he marked "Yes" to section 10 and, in fact, disclosed that he was a dual citizen of the United States and Romania. In his comments, he mistakenly wrote that he involuntarily acquired his Romanian citizenship in June 2012. I considered Applicant's demeanor, and he credibly testified at hearing that he understood he acquired Romanian citizenship at birth by being born to a Romanian citizen, and he meant to state in his application that he had acquired his Romanian birth certificate in June 2012. I find that AG ¶ 16(a) has not been established.

Guideline B, Foreign Influence

The security concern 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. The following 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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) 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.

Applicant's father, while residing in Germany, is a dual U.S. and Romanian citizen who spent much of his life working for the U.S. Government. His one aunt in Romania is deceased, and his aunt in Germany is elderly. I find that no disqualifying conditions have been established for these family members.

Applicant's spouse is a longstanding employee of the Danish government, through which she holds a Danish security clearance. When she retires, she expects to

receive retirement benefits from the Danish government. AG ¶¶ 7(a) and 7(e) apply. In addition, Applicant has substantial assets in Belgium. AG ¶ 7(f) applies.

AG ¶ 8 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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; 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 is a native-born U.S. citizen. He received his bachelor's degree in the United States, and he worked for the U.S. Government domestically and abroad from around 1990 through 1997. He married a Danish citizen who works for the Danish government. He has reported this relationship to his security office since its inception. He and his family live in Belgium, and his assets are primarily located in Belgium, because he has worked there for NATO since 1998. He and his family return to the United States regularly, and he intends to move his family to the United States upon his and his wife's retirement. He would willingly dispose of any foreign assets if required. His father's lifelong commitment to U.S. values are the ideals that have been instilled in him since he was a child. Despite the provision in his indefinite duration contract that requires his allegiance to NATO, he credibly testified, and his witnesses attested, that he is loyal to the United States. AG ¶¶ 8(b), 8(e), and 8(f) are established.

Guideline K, Handling Protected Information

The security concern for handling protected information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

- (b) collecting or storing protected information in any unauthorized location;
- (c) loading, drafting, editing, modifying, storing, transmitting, or otherwise handling protected information, including images, on any unauthorized equipment or medium;
- (g) any failure to comply with rules for the protection of classified or sensitive information; and
- (h) negligence or lax security practices that persist despite counseling by management.

Applicant had 28 security violations from 1999 to April 2011, in which he failed to properly secure classified documents and computer diskettes with protected information, and he improperly disposed of classified documents. AG ¶¶ 34(b), 34(c), 34(g), and 34(h) apply.

AG ¶ 35 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.

Since the May 2011 warning, Applicant changed his prior ways of negligently handling classified material. He became more disciplined. As such, he has not had any further security violations. He intends to remain diligent. He understands that any future violations could have a consequence on his continued security clearance eligibility. AG ¶¶ 35(a) and 35(b) apply.

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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have incorporated my comments under Guidelines B, C, E, and K in my whole-person analysis. After weighing the disqualifying and mitigating conditions under these guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence, foreign preference, personal conduct, and handling protected information security concerns. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

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
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline K:	For Applicant
Subparagraphs 3.a - 3.b:	For Applicant
Paragraph 4, Guideline B:	For Applicant
Subparagraphs 4.a - 4.d:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge