



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



In the matter of: )  
)  
) ISCR Case No. 17-01779  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew W. Henderson, Department Counsel  
For Applicant: Pro se

July 10, 2018

**Decision**

LOKEY ANDERSON Darlene D., Administrative Judge:

**Statement of the Case**

On June 28, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on July 11, 2017, and requested a hearing before an administrative judge. The case was originally assigned to another administrative judge on September 13, 2017. It was transferred to the undersigned administrative judge on May 21, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on May 2, 2018, and the hearing was convened as scheduled on May 31, 2018. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered no exhibits at the hearing.

Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 8, 2018.

### **Findings of Fact**

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 36 years old. He is married and has one child. He holds a bachelor's degree, and has completed some credits in graduate school. He holds the position of Performance Engineer for a defense contractor. A security clearance is needed in connection with his employment.

Applicant was born in the United States. He attended an American university and obtained his bachelor's degree here in 2002. He received additional course work, and was then employed with his current employer in 2006, where he worked in the United States. In 2009, Applicant was transferred by the same company to work in Japan. (Tr. p. 21.) Applicant met his wife, a Japanese national, in April 2010 and they were married in the spring of 2012 in the United States. They have a one year old son.

Since 2009, Applicant has worked and resided in Japan. He is legally employed in Japan under a Status of Forces Agreement (SOFA) visa issued by the United States and recognized by the Japanese government. It allows him access around the country of Japan and the ability to stay, but he is precluded from working for a non-U.S. Government job. He is also not entitled to any of the Japanese government benefits provided its citizens such as welfare and insurance.

Applicant co-owns a Japanese Card Shop he invested in with an approximate value of \$25,000. He explained that he purchased a 5 percent share of the company, and has recently been asked if he would like to sell his shares. Applicant also has one Japanese bank account that has never held a balance above \$1,000. Applicant's income from his employer goes into two United States banks.

Applicant's wife is a citizen and resident of Japan. She owns a small company she started that provides coaching and seminar training. It is a registered single owner business under Japanese law. The business is doing well and is growing dramatically. Its current value is worth approximately \$500,000. Applicant's spouse also owns three apartments in Japan with an approximate value of \$45,000. She has several loans against the properties. She also pays Japanese taxes and receives the benefits offered to Japanese nationals. Applicant's son is a dual citizen of the United States and Japan, since he was born in Japan and his father is a United States citizen.

Applicant and his wife have chosen to keep their finances entirely separate. They do not share bank accounts. Applicant's wife has four active Japanese bank accounts, consisting of two personal bank accounts and two corporate accounts. As of

the date of the hearing she has approximately \$780,000 in her corporate accounts. (Tr. p. 28.) Applicant's wife also has a number of aunts and uncles in Japan, but she does not hear from them aside from the birth of her baby or during her wedding. Applicant has never met them.

Applicant's father-in-law is also a citizen and resident of Japan. He is now retired. Applicant's only contact with him is when he visits once every four months or so to see his grandson. He does not speak good English and Applicant has very little dialog with him. (Tr. p. 30.) Applicant does not speak conversational Japanese but is able to get by. He does not have any Japanese friends, as he has trouble discussing things beyond the basics. (Tr. 32.)

Since moving to Japan for work with his company, Applicant has regularly traveled back to the United States on average about two to three times a year. (Tr. p. 37.) Applicant also maintains a 401(k) retirement account with an American finance company which contains about \$500,000. He also holds a long term-American managed investment account that now stands at about \$300,000. (Tr. p. 39.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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 national security eligibility will be resolved in favor of 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 access to classified information. 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 information.

Section 7 of Executive Order (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**

### **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. Three 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 interests.

Applicant's roots are in the United States. He was born here, grew up here, and went to college here. He also started his working career in the United States. Although he now lives and works in Japan, he does so only in order to continue his employment with an American contractor who transferred him there. Applicant is still deeply engrained in the American culture. Admittedly, he has lived in Japan, an ally of the United States, for the past nine years. He has married a Japanese foreign national, and they have a child together, who is a dual citizen.

Applicant's foreign contacts, which include his spouse and his father-in-law, do not pose a threat to Applicant's security worthiness. Applicant has minimal contact with his father-in-law, who is retired and is not affiliated with the Japanese government. It is recognized that Applicant's wife is a successful Japanese business woman who has almost \$2 million dollars in business interests in Japan. However, similarly, Applicant is a successful engineer for a United States government contractor in Japan. Applicant also has significant financial assets in the United States, totaling almost \$1 million dollars. Balancing these conflicting interests, Applicant's contacts in Japan do not threaten or influence him to have a divided allegiance. His job is most important to him, as he and his wife do not commingle their income. Since 2009, Applicant is restricted by the laws in Japan to working only for the United States government. He does not have the freedoms of Japanese citizens. Furthermore, because of the language barrier, Applicant does not have Japanese friends, for the most part. Applicant stated that at any given time he can easily move his family to the United States. He explained that given the nature of his wife's business, she can easily operate her business in Japan from the United States, and that they have considered that an option. Applicant's small investment in the Japanese card company is not something he plans to continue to keep. In fact, to avoid further problems with his clearance, he is discussing the idea of selling his interest in this investment. Accordingly, Applicant is not subjected to a heightened risk of foreign influence or exploitation or personal conflict of interest from his connection to his family Japan or from his financial interests in Japan. However, the evidence is sufficient to raise these disqualifying conditions.

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

(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 United States;

(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.

Again, the nature of the Applicant's relationships with his spouse, and his father-in-law in Japan do not pose a security risk. There is no conflict of interest. No one in his wife's family is associated with the Japanese government, nor do they show any interest in the Applicant or his work. Applicant is a United States citizen and his relationship with his family does not result in a divided allegiance. There is nothing here that may manipulate or induce the Applicant to help a foreign person or government in a way that is inconsistent with the U.S. interests. Based upon this history, Applicant will always resolve any situation in favor of the United States. Full mitigation under AG ¶ 8(a), 8(b), and 8(f), has been established.

### **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 considered the potentially disqualifying and mitigating conditions in light of all 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 those guidelines, but some warrant additional comment.

Applicant has no history of misconduct or security violations. His Japanese connections do not pose a risk to the U.S. government. Applicant obviously has the level of judgment required to access classified information as evidenced by his longstanding commitment to our country.

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 F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge