



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



In the matter of:)
)
) ISCR Case No. 17-02973
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant has mitigated foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 5, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline E (personal conduct). The action was taken under Executive Order (EO) 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's) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on November 17, 2017, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on February 2, 2018. Applicant received the FORM on March 5, 2018, and had 30 days to submit material in refutation, extenuation, or mitigation. Applicant did not respond. The Government's documents, identified as Items

1 through 9, were also admitted into evidence without objection. The case was assigned to me on June 8, 2018.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Ukraine. The request and the attached source documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. All of the documents referenced in the Request for Administrative Notice and the facts asserted therein, are from open sources and are dated. Ukraine has been plagued by corruption and human rights abuses; it is often lawless; and it has been occupied militarily and ruled by an authoritarian Russian regime. Applicant did not object, and I have taken administrative notice of the facts contained in the HE I source documents, and incorporated them by reference. The facts are summarized in the written request and will not be repeated verbatim in this decision. A few salient facts are as follows:

Ukraine is a republic with a semi-presidential political system. Russian forces entered Ukraine's Crimean Peninsula in February 2014 and occupied it militarily. The United States does not recognize the attempted "annexation" of Crimea by the Russian Federation. Russian Law has de facto applied in Ukraine's Crimea since the Russian occupation. Individuals, including U.S. citizens, have been threatened, detained or kidnapped for hours or days after being stopped at separatist checkpoints. The situation in Ukraine is unpredictable and could change quickly. The most significant human rights developments in the Ukraine are the result of ongoing conflict and internal corruption. The country suffers from impunity for corruption and deficiencies in the administration of justice.

Department Counsel made a motion to withdraw SOR ¶ 2.a under AG E (Personal Conduct). That motion was granted and SOR ¶ 2.a was withdrawn.

Findings of Fact¹

Applicant is a 38-year-old interpreter-linguist sponsored for a security clearance by a defense contractor. He is pending employment as a linguist in Ukraine since March 2016 as he speaks Ukrainian. This is precisely why the United States sought Applicant out and hired him – for his esoteric language skills. He was born in Ukraine and graduated from high school there in 1998. He has since obtained an associate's degree in the U.S. in 2012. Applicant's father sent him \$30,000 to help with tuition while he was in college. In 2008, Applicant sent \$6,000 to his then girlfriend, now wife, before she came to the U.S. He also sent small amounts of money to his mother-in law in Ukraine

¹ Unless otherwise stated, the basis for these findings of fact is Applicant's Questionnaire for National Security Positions (SCA) dated May 11, 2016 (Item 5) and the summary of his clearance interview by a clearance investigator on June 1, 2016. (Item 9)

and a former girlfriend several years ago. Applicant purchased a home in North Carolina in 2015.

Applicant submitted a Questionnaire for National Security Positions (SCA) on May 11, 2016.² He came to the United States in 2004 and was naturalized in November 2008. He renounced his Ukrainian citizenship at that time. Applicant has been married since 2010 and reports one son, age two. Applicant's parents are retired and live in Ukraine. His father was a warehouse director and his mother was an accountant and homemaker. They own two houses and two apartments in Ukraine. Their primary residence in Ukraine is valued at \$100,000. Applicant visits Ukraine once a year and he has weekly contact with his parents by phone. He also has monthly contact with his brother living in Ukraine. They are not affiliated with the Ukrainian government, or any other foreign government. Applicant visited Ukraine in 2009, 2010, 2011, and 2013.

Applicant was a member of the New Jersey (NJ) Army National Guard from July 2007 to January 2016 and he received an honorable discharge. He deployed to Iraq in November 2008 for one year. He was a supply sergeant (E-5) and intends to continue to drill with the Air National Guard. Applicant had a previous security clearance since 2008. In his May 9, 2016 counterintelligence (CI) interview Applicant stated that he also deployed to Qatar from August 2014 to April 2015. He has yearly contact with two cousins in Ukraine – one is a major in the Ukraine Army and the other is a retired colonel. In response to question one of his CI questionnaire, Applicant responded that there is no other country that he has allegiance to over the U.S.³ He elaborated that his heart will always be in Ukraine because that is where he was born and spent the majority of his life. He would never return to live in Ukraine because of the corruption there. The CI interviewer suggested that Applicant might present a CI and force protection threat and this is a possible foreign influencer.

Applicant admitted the SOR allegations under Guideline B, SOR ¶¶ 1.a through 1.e, in his Answer to the SOR of November 2017. Applicant attached a letter to his Answer to the SOR stating that he was in basic training in Oklahoma in fall 2007 when he completed the SCA, and he was working as a CAT-2 linguist for the U.S. in Ukraine when he responded to the SOR in 2017. Other than his two recent deployments with the National Guard, Applicant has been unemployed since March 2016.⁴ He presently receives \$2,000 a month in unemployment benefits and \$900 a month in GI Bill benefits. He does not feel that his family members in Ukraine are under any threat, and he was never approached for classified or sensitive information at any time by any person. Applicant has no sympathy, preference for, or alliance with foreign nationals.

² Item 5.

³ Item 6.

⁴ Item 9.

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(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."

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

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 that is 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, such considerations as whether the foreign country is known to target United States 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; 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 heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's parents, brother, in-laws and cousins are citizens and residents of Ukraine. That's because he was born there. Ukraine is unstable and continues to have human rights problems, rampant corruption, and terrorist attacks. It remains under the control of Russia's authoritarian regime. Applicant's foreign contacts may create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his family members. He may stand to inherit his parents' real estate holdings in Ukraine, when they pass. However, he will likely liquidate them as he expresses no desire to live in Ukraine. AG ¶¶ 7(a), 7(b), and 7(f) have been raised by the evidence.

Conditions that could potentially mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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;

(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.

I considered the totality of Applicant's foreign contacts and interests. Guideline B is not limited to countries hostile to the United States:

The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.⁵

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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, the country is known to conduct intelligence

⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant came to the United States in 2004. He became a U.S. citizen in 2008. He purchased a home of unknown value in North Carolina and is raising a son. Applicant served honorably with the N.J. National Guard in Iraq and he intends to continue drilling with the Air National Guard. Applicant has gone in harm's way and served in the U.S. military in a war zone. He has longstanding relationships and loyalties here. Although he has provided financial support to foreign citizens in the past, it was de-minimis and reasonable under the circumstances. He has the opportunity to be gainfully employed by a federal contractor and appears to be a solid citizen. He continues to have only fleeting, occasional contact with his family members in Ukraine. There is no indication that they are affiliated with the Ukrainian government or intelligence services, except for his cousin who is a major in the Ukraine Army. Applicant is committed to his new life here. AG ¶¶ 8(a), (b), and (c) are applicable to the Ukrainian family members and in-laws foreign contacts, which are alleged in SOR ¶¶ 1.a through 1.e. Because Applicant's ties to Ukraine are minimal and inconsequential, I find that all foreign influence concerns have been mitigated.

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 the 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.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated foreign influence security concerns.

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:	FOR Applicant
Subparagraphs 1.a – e:	For Applicant
Paragraph 2, Guideline E:	Withdrawn

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.

Robert J. Kilmartin
Administrative Judge