



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03621

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

07/05/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On December 5, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence).¹ In a response signed on January 24, 2018, he admitted the four allegations raised and requested a determination based on the written record. On February 15, 2018, the Government issued a File of Relevant Material (FORM) with seven attachments ("Items"). The FORM amended the SOR with the addition of one allegation under Guideline E (Personal Conduct). Applicant addressed neither the additional allegation nor the FORM within the time provided. The case was assigned to me on June 12, 2018. Based on my review of the case file and submissions, I find Applicant failed to mitigate security concerns.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Israel. The request was included in the FORM at Items 6-7. I have taken

¹ The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017.

administrative notice of those facts. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that, while a close ally and trading partner of the United States, Israel has a documented history of illegally importing U.S. classified information and controlled technologies. The threat of terrorist attacks within Israel is an ongoing concern. A U.S. State Department travel warning is in effect for Israel, the West Bank, and Gaza. Gaza is under the control of Hamas, a U.S. Government-designated foreign-terrorist organization. The government of Israel considers U.S. citizens who also hold Israeli citizenship to be Israeli citizens for immigration and other legal purposes.

Findings of Fact

Applicant is 46 years old and has been employed by the same government contractor as a software development team leader since 1998. He has earned both a bachelor's degree and a master's degree. Born in Moldova, he came to this country in 2008 and became a naturalized United States citizen in 2015. Applicant is married and has two minor children. Scant information is available regarding Applicant's home life, finances, or nexus to his community.

Applicant maintains relationships with individuals who are citizens and residents of Israel, including his parents, a sister, his parents-in-law, and multiple non-family members. Applicant's mother is a retired social worker and his father is a retired high school sports coach. They have no affiliation with a foreign government, military, security, defense industry, or intelligence service. Applicant maintains telephonic and electronic contact with his parents, and he visits them when he is able.

Applicant similarly maintains such contact with his married sister, a school teacher. She has no affiliation with a foreign government, military, security, defense industry, or intelligence service.

Applicant has had telephonic and electronic contact with his father-in-law since meeting him in 1995. Applicant visits with him in person when he has the opportunity to do so. The father-in-law is semi-retired, continuing to work as a security guard for a commercial business. Applicant noted that the man has no governmental or military affiliations. Similar information was provided with regard to Applicant's mother-in-law, a retired retail worker.

Among other family with Israeli ties, Applicant's sons are dual citizens of Israel and the United States. They are currently enrolled in schools in the United States. Applicant has daily contact with the children.

In addition, Applicant has ongoing relationships with non-family members who are citizens of Israel. One such individual is his supervisor, who is based in Israel as a manager. He is currently active as an officer in the reserve branch of the Israeli Defense Service (IDS). Another individual is a workplace colleague of Applicant, with whom he maintains telephonic and electronic contact, and who he sees during the colleague's

quarterly visits to the United States. Applicant believes this person may presently be a reservist in the IDS. Applicant maintains telephonic and electronic contact with this individual, and they meet when the colleague visits the United States about every two years.

Applicant maintains contact with several other work-related foreign nationals that Applicant feels he is bound by affection, influence, or obligation. (FORM, Item 5, at 17) Descriptions of these individuals are similar to those for his supervisor and workplace colleague. Except for his supervisor, none of these individuals has a current nexus to a foreign military or government.

In February 2017, Applicant and his wife were on vacation. Applicant was with a friend who, at one point, bought some marijuana sold for medical purposes. He and Applicant used the drug through a pipe. Applicant used the marijuana on two occasions during his visit. In an August 2017 interview related to this process, Applicant was asked to confirm his “no” response to drug use in the last seven years. Applicant volunteered that he twice used marijuana on his 2017 vacation, after he had completed a June 2016 security clearance application (SCA). (FORM, Item 5, at 26) The standard SCA explicitly inquires about past and present drug use.

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 used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. Under the AG, any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or

proven by Department Counsel and 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

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. citizen to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant has natural ties of affection with multiple family members who are citizens and residents of Israel. Moreover, he noted that he feels bound by affection, influence, or obligation to some of his Israel-based work-related contacts. I find disqualifying conditions AG ¶¶ 7(a) and (b) apply:

AG ¶ 7(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, and

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.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, and find the following to have the most potential applicability:

AG ¶ 8(a) the nature of the relationship 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, 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 interests in favor of the U.S. interests; and

AG ¶ 8(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.

Applicant is obviously close to his kin, with whom he maintains regular contact. His relationships with non-family members in Israel appear to be close, but of lesser concern. While Israel has a documented history of illegally importing U.S. classified information and controlled technologies, it remains a close ally of the U.S. and a significant trade partner. Applicant's contacts appear to be average citizens; his colleagues work for the same U.S. defense contractor as Applicant. Under these facts, it appears highly unlikely Applicant would be put in a position to choose between the interests of Israel or his foreign kin over the interests of the United States.

Guideline E, Personal Conduct

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

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.

AG ¶ 16(e) describes a condition that could raise a security concern and may be disqualifying in this case:

personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1)

engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

Applicant completed a SCA in 2016. In the SCA, he was asked about drug use in the preceding seven years. Applicant denied drug misuse during that time frame. His SCA was submitted for consideration with the hope of being granted a security clearance. While the vetting process was pending, Applicant used marijuana. When asked to confirm his previous denial of drug use in the preceding seven years, Applicant confessed he had recently used marijuana. Given the pendency of his SCA, his recent drug use raises questions regarding his judgment. AG ¶ 16(e) applies.

AG ¶ 16 describes conditions that could mitigate the personal conduct security concerns:

AG ¶ 16 (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 16 (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 16 (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

None of the mitigating conditions is fully applicable in this case. In completing his 2016 SCA, Applicant was put on notice that abuse of drugs, including marijuana, which is illegal on the federal level, was an issue in the vetting of individuals applying for a security clearance. He chose to use marijuana while his application for a security clearance was pending. He knew or should have known that marijuana use was illegal and could adversely affect his eligibility for a security clearance.² Given these facts, and lacking information regarding his subsequent rehabilitative acts, if any, none of the available mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed in the AG. The final determination must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

² This is true regardless of whether Applicant's friend had a prescription for the drug valid within his state.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and conducted a whole-person analysis based on the record. In addition to Applicant's foreign contacts and drug use, I considered factors such as his age, profession, educational attainments, past employment, and lifestyle.

While Applicant's information regarding his family and associates in Israel is limited, it shows that it is highly unlikely Applicant would ever be forced to choose between Israel or his Israeli kith and kin, and the interests of the United States. Given these facts, foreign influence security concerns are sufficiently mitigated. Regarding Applicant's recent marijuana use, however, it is noted that it occurred after he had completed his SCA and initiated the security clearance vetting process.

A mature and educated individual with years of experience as a contractor, Applicant knew or should have known that marijuana use was antithetical to the maintenance of a security clearance. With such knowledge, however, he used the drug after submitting his SCA. While he should be commended for his candor, there is no information regarding subsequent commitment to abstinence or any action taken toward rehabilitation to mitigate security concerns. In light of the above, I find that Applicant failed to provide adequate evidence to mitigate foreign influence and personal conduct 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-1.d:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge