



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



In the matter of:

ISCR Case No. 17-03736

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: Pro se

July 25, 2018

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On November 20, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on January 9, 2018, and requested a hearing before an administrative judge. The case was assigned to me on April 24, 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 June 14, 2018. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered no exhibits at the hearing. Applicant testified on his own behalf. The record remained open until close of business on June 28, 2018 to allow Applicant the opportunity to submit additional documentation. Applicant

submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibit A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 22, 2018.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to the country of Belarus. Department Counsel provided a six page summary of the facts, supported by eight Government documents pertaining to Belarus, identified as Government Exhibit 4. The documents provide elaboration and context for the summary. Applicant had no objection. I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

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 49 years old and divorced. He has a bachelor's degree in Computer Science, and is currently applying for a position as a Linguist. A security clearance is required in connection with his employment with a defense contractor.

Applicant was born in Minsk, Belarus in September 1968. He attended the university in Belarus, and completed two years of his mandatory military service in the Soviet Union. In 1991, he sought refugee status to the United States when his ex-wife and her parents were being persecuted for being Jewish while living in Belarus. In 1992, their refugee status was approved, and at the age of 24, he first arrived in the United States in September 1992, as a Belarussian refugee. In September 1993, Applicant received his permanent resident card, and he became a naturalized U.S. citizen in July 1999. Applicant testified that he is actively seeking a security clearance for a job that is no longer available.

Applicant's mother and brother are citizens and residents of Belarus. Applicant maintains contact with his mother in Belarus about once a month, and with his brother a couple of times a year. Before his mother retired, she worked at a company that made vehicles to repair construction equipment. She now supports herself with something similar to social security she receives from Belarus. In the past, Applicant has provided his mother with financial support to supplement her income. He testified that he has given her a total of approximately \$7,000 over the years. (Tr. p. 28.) He last sent her money in 2012, which was the last time he physically saw her. Applicant's younger brother is an engineer who works for a private company. On occasion, Applicant has given his brother \$100 or so on family visits. Both Applicant's mother and brother reside in the same apartment, owned by Applicant's mother. (Tr. p. 31.) Applicant's father

died in 2006. Prior to his death, he worked as an Electrical Engineer for a private company.

Applicant has an ex-girlfriend, he met online on an international website in 2013, who is a citizen and resident of Russia. At the time he met her, he believed she lived in Sweden, and he had no idea that she worked for the Russian government. (Tr. p. 33.) He later learned that she was employed with the Russian Ministry of Foreign Affairs. From 2013 to 2016, Applicant spoke with her many times, but only physically saw her twice when she came to the United States. On those two occasions, she stayed with the Applicant for at least 30 days at a time at his home. (Tr. p. 34.) Applicant states that he recently learned that she quit her job, and that she now works in the private sector. He currently maintains contact with her several times a year. (Tr. p. 39.) Several weeks before the hearing, she posted some pictures on facebook and Applicant initiated contact with her to start up small talk. (Tr. pp. 39 - 40.) He believes that she currently lives in Moscow. Applicant states that she has never probed him for information.

Letters of recommendation from Applicant's former boss with whom he worked as a tax preparer, and from a role player manager for a training support marines contract attest to Applicant's high level of efficiency, diligence, care and concern, timeliness and completeness. (Applicant's Post-Hearing Exhibit A.)

I have taken administrative notice concerning the country of Belarus. Belarus is an authoritarian state. Since his election as president in 1994, Aliaksandr Lukashenka has consolidated his rule over all institutions and undermined the rule of law through authoritarian means, including manipulated elections and arbitrary decrees. There are significant human rights problems that include abuses by the security forces, authorities arbitrarily arrest detain and imprison citizens for criticizing officials, participating in demonstrations or other political reasons. There is judiciary political interference and lack of independence; government restricted civil liberties, including freedom of speech, press, assembly, association and religion. Official corruption in all branches of government remain a problem. There is violence and discrimination against women; Trafficking in persons; state sponsored labor forces; and cyber crime is prevalent. The government of Belarus continues to detain and fine religious leaders for engaging in unregistered religious activities.

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. Two 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; and

(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.

Applicant's foreign family members include his mother and brother, who are citizens and residents of Belarus. Based upon the evidence presented, they do not threaten or influence Applicant's choice of interest as a naturalized United States citizen. Applicant's contact with them is casual, minimal and not out of the ordinary. They have no interest in or knowledge of Applicant's security clearance or work product. On the other hand, Applicant's contact with his past on-line girlfriend raises some serious concerns. Applicant met this woman on-line. He established a relationship with her, and she came to visit him on two separate occasions in the United States, where she stayed at his home, each time for at least a 30-day period. Applicant states that he did not know that she worked for the Russian government until sometime later. Under the particular circumstances here, the risk-benefit analysis is applicable, and this contact poses a security risk to the U.S. government that is not necessary. 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. Applicant has subjected himself to a heightened risk of foreign influence or exploitation or personal conflict of interest from his connection with this woman. 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; and

(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

(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.

The nature of the relationships with his family do not pose a security risk. There is no conflict of interest. No one in his family is associated with the Belarus government, nor do they show any interest in the Applicant or his work. Applicant is a naturalized U.S. citizen and his relationship with his family does not result in a divided allegiance. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has been established in regard to his family members. The same is not true for his ex-girlfriend who is a foreign national. No mitigation is applicable. The relationship poses a heightened security risk particularly relevant to this proceeding.

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's familial Belaurus connections do not pose a risk to the U.S. government. However, his strange, unique, and unusual contact with his ex-girlfriend, a foreign national, about whom he has limited information, does create an unnecessary security risk not worth any benefit to the U.S. government.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge