



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-03779
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

May 29, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 8, 2014. On November 7, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 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 within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 19, 2014. He answered the SOR in writing on December 4, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on March 2, 2015. DOHA issued a notice of hearing on March 5, 2015, and I convened the hearing as scheduled on April 10, 2015. The Government offered Exhibit (GX) 1, which was received without objection. Applicant testified on his own behalf, as did his Senior Project Leader, and submitted Exhibit (AppX) A, which was received without objection.

DOHA received the transcript of the hearing (TR) on April 20, 2015. I granted Applicant's request to keep the record open until May 11, 2015, to submit additional matters. On May 1, 2015, he submitted Exhibit B, which was received without objection. The record closed on May 11, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of Korea (South Korea). The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

Guideline B - Foreign Influence

At the age of 16, the 31 year-old Applicant immigrated to the United States with his parents and with his younger brother. (TR at page 20 line 17 to page 21 line 10.) He attended high school and university in the United States, and became a naturalized citizen at age of 18. (TR at page 21 line 17 to page 22 line 20, and GX 1 at pages 5 and 7.)

1.a. Applicant's older sister is a citizen and resident of South Korea. (GX 1 at page 25.) She has no connection with the South Korean government, working for a "private insurance company," and Applicant communicates with her about "once a year." (TR at page 30 line 15 to page 32 line 1, and at page 30 line 15 to page 32 line 1.)

1.b. Applicant's younger brother resides permanently in the United States, but Applicant is unaware if his brother has yet to be naturalized as a U.S. citizen. (TR at page 26 line 15 to page 28 line 8.) His brother was married in the United States and is "an MRI Technician" at an American hospital. (*Id.*) Applicant has little contact with his younger brother. They last spoke "about five years ago." (TR at page 28 line 23 to page 29 line 14.)

Applicant's father is a citizen of South Korea, but resides permanently in the United States with Applicant's mother. (TR at page 26 line 15 to page 28 line 8.) Because of language difficulties, his father has been unable to pass his U.S. citizenship exam. (*Id.*) His father is retired from "a dry cleaning business."

1.c. Applicant's mother is a dual national of South Korea and of the United States, but resides permanently in the United States. (TR at page 28 lines 11~22.) She is retired. (TR at page 30 lines 1~3.)

I also take administrative notice of the following facts. South Korea, an erstwhile ally, generally respects "the human right of its citizens." However, it "has a history of collecting protected U.S. information." It ranks "as one of the seven countries most actively engaging in foreign economic collection and industrial espionage against the United States."

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 useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 10865 provides that 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

Paragraph 6 of the adjudicative guidelines sets out the security concern relating to Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by a foreign interest.

Here, Paragraph 7(a) is arguably applicable: “*contacts with a foreign family member . . . 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.*” Applicant has a sister who is a citizen and resident of South Korea. The rest of his immediate family reside in the United States; but his mother is a dual national, his father a citizen of South Korea, and his brother may be a citizen of South Korea. This is clearly countered, however, by the first mitigating condition 8(a), as “*the nature of the relationships with foreign persons, . . . 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 . . . and the interests of the U.S.*” Applicant has lived in the United States since the age of 16, is a U.S. citizen, has been educated here, and has little connection with South Korea. He only communicates with his Korean sister about once a year. His parents are retired and his brother works for an American hospital.

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 the circumstances. 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

The record shows that the Applicant understands his responsibility to the United States, and he is highly touted by a Senior Project Leader at work. (AppX A, and TR at page 16 line 5 to page 18 line 24.)

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. 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 security concerns arising from his alleged Foreign Influence.

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
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge