



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06278

Appearances

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

December 8, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on March 11, 2014. (Government Exhibit 1). On June 1, 2015, the Department of Defense (DOD) pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR in writing on June 9, 2015, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on August 12, 2015. A notice of hearing was issued that same day and the hearing was scheduled for September 24, 2015. The Government offered one exhibit, referred to as Government Exhibit 1, which was received without objection. The Applicant presented no exhibits at the hearing. She testified on her own behalf. The

record remained open until close of business on September 30, 2015, to allow the Applicant to submit supporting documentation. Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through D, which were admitted without objection. The transcript of the hearing (Tr.) was received on October 2, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Syria. (Tr. p. 13.) There was no objection from Applicant. (Tr. p. 13.) 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

The following Findings of Fact are based on Applicant's Answer to the SOR, her testimony and the exhibits. The Applicant is 24 years of age and single. She has a Bachelor's of Science degree in Computer Science. She is employed as a Software Engineer by a defense contractor and seeks to obtain a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

Applicant denied the single allegation set forth under this guideline. She has been working for her current employer since January 2014. This is her first time applying for a security clearance.

Applicant is an American citizen who was born and raised in the United States. She was a national merit scholar who received a full scholarship to a university in the United States. She attended that university, where her good friend was dating a student by the name of A. At some later date, Applicant was introduced to A's brother B, a foreign national, and they all socialized together a couple of times.

In January 2014, after graduating from college, Applicant moved out of state to begin employment. She knew no one in her new city except her roommate from college. One night in February 2014, Applicant unexpectedly happened to run into B. They exchanged numbers and were talking for a period. They went out once every two weekends from February through April, a total of eight weekends. (Tr. p. 23.) Applicant learned that B was the grandson of a former high-ranking official in Syria. He told her

that his grandfather received political asylum in America, and that they cannot go back to Syria because of the horrible situation that exists there. (Tr. p. 26.) It was about this time that Applicant was filling out the security clearance application, so she noted this foreign encounter in her application. Applicant stated that she did not develop a strong relationship with B, as they had nothing in common. She has had no contact with him since April 2014. They are not friends on social media either. She has no plans to contact him or for him to be a part of her life. In the very remote event that she is ever contacted by B again, and is asked questions concerning the national security or what she does as an Engineer, she would immediately report it to security. (Tr. p. 27.) Applicant has now established herself in her new city and has made many friends who are Americans.

A letter of recommendation from the Applicant's manager, who has worked with the Applicant for almost two years, indicates that she is a model employee who displays a professional, positive, ethical and trustworthy attitude at all times. She is trusted with company proprietary data and the technical direction of their products without issue. She is valuable to the company and highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit A.)

Applicant received a Certificate of Appreciation dated November 10, 2014, for her success on the job. (Applicant's Post-Hearing Exhibit B.) Applicant's performance evaluation for the period from January 1, 2014, through December 31, 2014, shows that she is an excellent employee with an overall rating of 4 "high performance". She is said to be working almost two grades above her current grade, and she is excelling above her peers. She is recommended for promotion. (Applicant's Post-Hearing Exhibit C.)

Applicant's college transcript shows that she was an outstanding student with a 4.0 grade point average. (Applicant's Post-Hearing Exhibit D.)

I have considered the information provided by the Government on Syria. Syria Arab Republic is ruled by an authoritarian regime dominated by the Socialist Ba'ath Party, which is currently engaged in a full-scale war with the armed Syrian opposition. The regime has used deadly force to quell anti-government protests. The government is no longer in control of vast swathes of the country, particularly in northern and eastern Syria. Some Syrian opposition groups have utilized car bombs, improvised explosive device, indirect-fire attacks, sniper fire, and kidnappings throughout the country. Foreign combatants, including Iranian regime elements, Hizballah fighters, Islamic extremists, and al Qaida-linked elements, are participating in hostilities. The U.S. intelligence community assess with high confidence that the Assad regime has used chemical weapons, including the nerve agent, Sarin, on a small scale against the Syrian people multiple times over the past year. The security situation throughout Syria is very likely to remain volatile and unpredictable for the foreseeable future.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial 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 any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Conditions that could raise a security concern:

7. (a) contact 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 risks of foreign exploitation, inducement, manipulation, pressure, or coercion; and

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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Conditions that could mitigate security concerns:

8. (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 U.S.;

8. (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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; and

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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have

reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's situation and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Conditions 7.(a) *contact 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 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information* apply. However, Mitigating Conditions 8.(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 U.S.;* 8.(b) *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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; and 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 also apply.

Applicant is an American-born citizen who met a foreign national under casual circumstances. They socialized for several months and then went their separate ways. Applicant has had no association with the foreign national for over a year and a half. She has no future plans to associate with him. Furthermore, the foreign national has no knowledge of what Applicant does, where she works, or that she is applying for a security clearance. Applicant's foreign contact was limited, infrequent, and in no way poses a security risk to the United States. Applicant explained that over the past two years, she has established herself on her job with her new friends in her new city who are all Americans.

It is noted that the current political situation in Syria elevates the cause for concern in this case. In this case, the Applicant has everything to lose and nothing to gain by engaging in any improper foreign contact with a foreign national from Syria. Everything that she has worked for could be destroyed. Applicant has long-standing ties and deep relationships in the United States. Under the particular circumstances of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. The Applicant is an intelligent, young, engineer who has a great future with the Defense Department. Her favorable evidence, including her performance evaluation and letters of recommendation from those that know her well, in addition to her overall intelligence and integrity gleaned from her testimony, all demonstrate her trustworthiness. She has presented sufficient evidence in mitigation to demonstrate that she is not a security risk.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subpara. 1.a.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge