



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



In the matter of:)
)
) ISCR Case No.18-02887
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

09/04/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 31 December 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline B, Foreign Influence.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 17 May 2019, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 7 June 2019.

¹Consisting of the FORM, Items 1-4 and Official Notice (ON) items I-V (Item 5).

²DoD acted 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 Security Executive Agent Directive 4, effective 8 June 2017.

Findings of Fact

Applicant admitted the Guideline B allegations, without explanation. She is a 43-year-old employed by a defense contractor most recently since June 2018 (Item 4). When she applied for a security clearance in June 2017 (Item 3), she was unemployed. Presumably, this was a pre-employment application, because, in July 2017, she went to work for a defense contractor for whom she worked until September 2017, when she enlisted in a reserve component of the U.S. military (Item 4).³ She previously served on active duty in a different branch of the U.S. military from August 2002 to October 2008, when she was honorably discharge in paygrade E-4. She has not previously held an industrial clearance, but held a clearance during her time in the military (Item 3).

Applicant was born in the Republic of the Philippines (RP) in January 1976. She grew up and was educated there, obtaining her undergraduate degree in April 1999. In August 2000, she immigrated to the U.S., on an RP passport that would have expired in May 2003, apparently on a fiancée visa.⁴ She became a naturalized U.S. citizen in August 2003, at which time she surrendered her RP passport. Her most recent U.S. passport was issued in May 2012. She obtained an associate's degree in a medical field in June 2017.

Applicant's mother, a life-long homemaker, is a citizen of the RP, currently residing in the U.S. She immigrated to the U.S. in June 2017, where Applicant is sponsoring her for U.S. citizenship. Applicant's retired father, two older brothers, one younger brother, and one younger sister are resident citizens of the RP. Applicant has daily contact with her mother, annual contact with her father and one older brother, monthly contact with the other older brother, and quarterly contact with her younger brother and sister. She is unaware of what her siblings do for a living.

Republic of the Philippines

The Republic of the Philippines is a multi-party, constitutional republic with a bicameral legislature. However, dynastic political families continue to monopolize elective offices at the national and local level. There is widespread official corruption and abuse of power. Authorities fail at times to maintain effective control over the security forces.

³I assume this was the original sponsor of her clearance. It appears likely that her application remained active after she left this employer because she enlisted in a reserve component of the U.S. military. Nevertheless, her current defense contractor is listed as her sponsor for purposed of receiving DOHA communications.

⁴I infer this from the fact that Applicant listed her approximate date of entry into the U.S. as August 2000, she was first married four days after arriving in the U.S., and was naturalized as a U.S. citizen exactly three years later—approximately a year after enlisting on active duty in the U.S. military. She divorced her first husband in October 2004.

Security forces commit human rights abuses to include extrajudicial killings and enforced disappearances.

Other human rights problems include allegations of prisoner and detainee torture and abuse by security forces; violence and harassment against human rights activists by local security forces; warrantless arrests; lengthy pretrial detentions; overcrowded and inadequate prison conditions; killings and harassment of journalists; violence against women; abuse and sexual exploitation of children; and trafficking in persons. The government continues to investigate and prosecute only a limited number of reported human rights abuses, and concerns about impunity persist.

Long-running Muslim separatists and communist insurgencies continue to result in the displacement of civilians and the killing of soldiers and police in armed clashes. Terrorist organizations such as Abu Sayyaf Group (ASG), Jemaah Islamiya (JI), and the New People's Army (NPA), as well as elements associated with the separatist Moro Islamic Liberation Front (MILF), continue to kill security forces, local government officials, and other civilians. Although Philippines counterterrorism efforts sustained pressure on terrorist organizations, its members are suspected to have carried out attacks against government, public, and private facilities, primarily in the central and western areas of Mindanao; others were linked to extortion operations in other parts of the country.

U.S. citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including the risk of terrorism.

None of the source documents submitted by the Government reflects that the RP engages in economic or military intelligence activity directed toward the United States, or that any of the terrorist groups operating in the RP seek protected U.S. information.

Policies

The adjudicative guidelines (AG) list factors to be used to evaluate an applicant's suitability for a security clearance. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does,

the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁵

Analysis

The Government established a case for disqualification under Guideline B by demonstrating that Applicant has six immediate family members who are citizens of the RP, five of whom reside in the Philippines (SOR 1.a-1.c). Applicant's contacts and connections to the RP coupled with the terrorist threat bring AG ¶¶ 7(a) and (b) into play. However, Applicant mitigated the security concerns.

There is no evidence that Applicant's contacts with her family in the RP would subject her to a heightened risk of foreign influence or a personal conflict of interest. The RP is not known to engage in economic or military intelligence aimed at the United States. There is no evidence that Applicant's family has any connections to the RP government or military. In addition to her six years of honorable service in the U.S. military, during which time she held a clearance, she has recently re-enlisted in a reserve component, which speaks to her dedication to U.S. interests.

Examining Applicant's circumstances, the Government's evidence that there was a potential heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's contacts with her family in the RP has been overcome by Applicant's connections to the U.S. Applicant has resided in the U.S. nearly 20 years—almost half her life. She has served, and continues to serve, without incident in the U.S. military. She has no financial interests in the RP. Her financial interests are all in the U.S. She reported all her foreign connections as required. Her contacts with her family are routine, and not frequent with the exception of her mother, who now lives in the U.S. beyond the reach of the RP. There is nothing in the circumstances of her other relatives being in the RP, or in Applicant's contacts with them, to heighten the risk that she could be impelled or compelled to provide protected information to the RP [AG, ¶ 8(a), 8(b), 8(e)]. I find Guideline B for Applicant.

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs a-c: For Applicant

Conclusion

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

JOHN GRATTAN METZ, JR
Administrative Judge