

in the DOE security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).²

Upon his receipt of the Notification Letter, the individual, through his attorney, provided a written response to the allegations contained in the Notification Letter and requested an administrative review hearing. On February 19, 2014, the Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing. At the hearing, 11 witnesses testified, including the individual. In addition to the testimonial evidence, the LSO submitted ten exhibits into the record; the individual tendered nine exhibits. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion L refers to information indicating that an individual has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to . . . a pattern of financial irresponsibility . . . or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l).

B. Basis for the Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the derogatory information at issue in this proceeding involves Criterion L. To support its reliance on Criterion L, the LSO first states that the individual is living with his spouse who has close and continuing contact with family members all of whom are foreign government employees possessing similar expertise to his spouse. This fact, according to the LSO, creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. The LSO also charges that the individual's shared living quarters with his spouse "presents the existence of potential adverse influence or duress by someone he lives with . . ." Ex. 1. Second, the LSO claims that the individual's allegiance and connection to unspecified foreign nationals "with or without foreign government affiliations" makes him vulnerable to foreign influence and exploitation by a foreign government or its agents.

I find that the DOE properly invoked Criterion L in this case. When a person has contact with a family member, business or professional associate, friend or other person who is a citizen of, or resident in, a foreign country, especially one that is known to target U.S. citizens to obtain protected information, there is a security concern in some instances that the person may have divided loyalties, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in the U.S. interests, or may be vulnerable to exploitation, inducement, manipulation, pressure, or coercion by any foreign interest. *See* Guideline B of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines).

IV. Findings of Fact

The individual was born in a foreign country (hereinafter Foreign Country #1) and lived there continuously until he was 23 years old. Ex. 8, Ex. 10 at 8, 18. He received his formative education in Foreign Country #1, a country with a compulsory draft. Ex. 10 at 35, Tr. at 249-250, 257. The individual received an exception to the draft by attending a university in Foreign Country #1 (Foreign University) which had a military department. *Id.* at 258. In order to take certain classes in the military department of the Foreign University, the individual received a security clearance from Foreign Country #1. Ex. 10 at 59. Upon graduating from the Foreign University, the individual was sworn in as a reserve lieutenant in the army of Foreign Country #1. Tr. at 259.

In 1997, the individual came to the United States (U.S.) to attend a U.S. university in its graduate degree program. Ex. 10 at 18, Tr. at 250. While matriculating at the U.S. university, the individual met his future wife whom he married in 2002. Ex. 10 at 68, Tr. at 251. The individual received his Ph.D. from the U.S. university in 2001, and remained at the university for the following two years as an employee. Ex. 10 at 19-20, Tr. at 250.

In 2003, the individual accepted a position with a DOE contractor where he remained until 2007, when he took a year leave of absence after he grew concerned about possible funding cuts at the DOE contractor. Ex. 10 at 25-27, Tr. at 251, 264, 268. During his leave of absence, the individual accepted a position with a prestigious research institute in another foreign country (Foreign Country #2), with the knowledge and consent of the DOE contractor. Tr. at 268-269. After approximately four months working in Foreign Country #2, the individual decided to return to the U.S. because he missed his wife and children who had remained in the U.S., he disliked Country #2, and he was not satisfied with his work. *Id.* at 266-269. The individual resumed working for the DOE contractor upon returning to the U.S. *Id.*

In 2010, the individual renounced his citizenship from Foreign Country #1, permanently de-registered from the military register of Foreign Country #1, and became a U.S. citizen. *Id.* at 271- 275, Ex. C. The individual's wife also renounced her citizenship from Foreign Country #1 and became a U.S. citizen. Tr. at 189.

The individual's parents, sister and in-laws live in Foreign Country #1. The individual's father is a professor at a university in Foreign Country #1. Tr. at 282-283. His mother is retired but previously worked as an accountant at a university in Foreign Country #1. *Id.* at 282. The individual's sister teaches at a university, but he is not close to her and he does not know what subject she teaches. *Id.* at 283. The individual's mother-in-law is employed by a university in Foreign Country #1, and his father-in-law is employed by a research laboratory in that country. *Id.* at 157-160. His brother-in-law works for a private company in another country (Foreign Country #3). *Id.* at 175. Neither the individual nor his wife enjoys a close relationship with the wife's brother. *Id.*

Contrary to the allegations contained in Section A of the Summary of Security Concerns, none of the spouse's foreign family members is a "foreign government" employee.³ Furthermore, the

³ A professor and department chair at a U.S. State university with 34 years specializing in the interdisciplinary study of the language, literature, political science and history of Foreign Country #1 provided compelling testimony that employees of universities in Foreign Country #1 are not employees of Foreign Country #1. *Id.* at 136-151. He testified that there is no way any faculty member in Foreign Country #1 would consider himself or herself an employee of the government of Foreign Country #1, citing the Foreign Country #1's tradition of independence from the government. *Id.* at 136-138. Another witness, an employee of another DOE contractor, who worked for 30 years in Foreign Country #1, testified that those who work at one of the premier research institutions at issue in this case do not perceive themselves as government employees. *Id.* at 116. While acknowledging that the government of Foreign Country #1 provides more than 50% of the funding for the research institution at issue, the witness nonetheless remained resolute that the internal life in that institution is similar to the internal life of other research institutions in the U.S. *Id.* at 120-121. The individual's wife explained at the hearing that she responded affirmatively at the PSI to the questions asking if her relatives worked for the government of Foreign Country #1 because she wanted to err on the side of caution. *Id.* at 157-160. She added that she knew that the universities and the research institute that employ her family members receive part of their funding from Foreign Country #1 and, for this reason, thought it best to answer in the affirmative. *Id.*

spouse's mother, father, and brother do not possess subject matter expertise similar to the individual. *Id.* at 162-165, 172-176.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)⁴ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a).

A. The Wife's Close and Continuing Contact with Foreign Family Members and Its Potential Impact on the Individual

The sole issue in this case with regard to the individual's wife is whether her relationship with her mother, father, and brother might cause her to put pressure on the individual to act in a manner contrary to the interests of national security. A secondary question is how the individual would react if his wife were to exert such pressure on him.

First, the evidence in the record is clear that the wife's contact with her brother is minimal and superficial in substance. Tr. at 174. For this reason, any specter of foreign influence by the wife's brother over her is mitigated under Adjudicative Guideline B, ¶ 8 (c). With regard to the wife's relationship with her parents, the evidence in this record and in the administrative proceeding of her case⁵ persuade me that the individual's wife would not put the interest of her parents residing in Foreign Country # 1 above the interests of the U.S. She testified credibly that she would not compromise national security even if the lives of her parents were threatened by the government of Foreign Country #1. *Id.* at 233-235. She also provided compelling testimony that convinced me of her allegiance to the U.S. and her commitment to American values and traditions. Tr. at 184, 191, 230-231. In the end, I found the wife to be an earnest person whose life revolves around her husband and children, her work with the DOE contractor, and her community in the U.S.

The individual testified that he has known his wife for 14 years and he is certain that she would never ask him to provide information to anyone if someone she knew was being threatened. *Id.* at

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

⁵ The individual's wife is an applicant for a DOE security clearance. On June 17, 2014, I issued a Decision in Case No. PSH-14-0010, which described in detail why the evidence developed in that case mitigated the security concerns connected with the wife's relationship not only with her parents but other foreign nationals as well. See <http://www.energy.gov/oha/downloads/psh-14-0010-matter-personnel-security>.

308. He testified credibly that if anyone, including his spouse, asked him for protected U.S. information, he would immediately report the request to the DOE contractor. *Id.* His very strong sense of duty in this regard is corroborated by the testimony of a co-worker, a former manager, and a group leader who is also an Authorized Derivative Classifier (ADC). *Id.* at 21, 47, 61. The former manager commented that the individual is a very serious person who takes rules seriously. *Id.* at 62. He stated that in his integrated experience as a manager of over 15 years, his assessment of the individual is that of someone who has exhibited complete trustworthiness. *Id.* at 66. He concluded by opining that there was “no likelihood that he’d [the individual] be susceptible to blackmail, coercion or exploitation or duress that my cause him to act contrary to the best interests of the national security.” *Id.* at 65-66. A co-worker, who also socializes with the individual and his family, testified that the individual is a psychologically strong person. *Id.* at 24.

In the end, after considering the testimonial evidence and evaluating the individual and his wife’s demeanor and credibility, they persuaded me that (1) the wife will not induce, manipulate, coerce or unduly influence the individual to act contrary to the interests of U.S. national security; and (2) if the wife were to try to do so, the individual would not comply.

B. The Individual’s Allegiance to the U.S. and his Connections to Foreign Nationals

The Summary of Security Concerns neither explains why the LSO is questioning the individual’s allegiance to the U.S., nor specifies which connections to foreign nationals that the LSO finds problematic. Instead, the LSO only makes general statements and cites to support its concerns an unclassified counterintelligence report (Report). At the hearing, the individual tried to address all the matters set forth in the counterintelligence report.⁶

1. Concerns regarding Security Clearance from Foreign Country #1 and Military Duty

The individual provided compelling testimony that all males residing in Foreign Country #1 were subject to the draft in that country. Tr. at 257-260. There were two exceptions to being drafted: (1) poor health, or (2) enrollment in a university with a military department. The individual opted for the second option. The individual testified that after he completed all the requisite military courses in the Foreign University, some which required him to obtain a security clearance from Foreign Country #1, he took an exam, swore allegiance to the government of Foreign Country #1, and was commissioned as a reserve lieutenant. *Id.* at 259. The individual never actually served in the army of Foreign Country #1 even though he was commissioned as an officer. Ex. 9., Ex. 10 at 49. He testified that when he traveled to Foreign Country #1 to renounce his citizenship, he also went to the local reserve office and “de-registered” from military service. *Id.* at 260, Ex. C. He also testified that when he received his U.S. citizenship, he swore allegiance to the U.S., and renounced all allegiances to any other country or entity. *Id.* at 260.

⁶ In its Report, the DOE Counterintelligence Office raised an additional question about possible unexplained affluence on the part of the individual and his wife. Subsequently, the LSO mitigated that concern so it is not an issue in this proceeding and was not addressed at the hearing.

The evidence in this case is that the individual was compelled by virtue of his then citizenship in Foreign Country #1 to serve in the military of that country⁷, or to be educated to do so. Once the individual renounced his citizenship in Foreign Country #1, he testified credibly that he no longer had any allegiance to that country. He pointed out that to ensure that he would never be “called up” to military duty in his native country, he went to Foreign Country #1 and personally “de-registered” from military duty of Foreign Country #1. Ex. C. The individual explained at the hearing that prior to his coming to the U.S., he suffered some hardship in Foreign Country #1. Tr. at 298-300. He then stated that the U.S. has given him everything in contrast. *Id.* at 306. The evidence is replete with references to the individual’s loyalty to the U.S. government (Tr. at 20-23, 89, 97). After assessing his demeanor and credibility and considering the testimonial and documentary evidence in the record, I find that the individual is committed to the U.S. and will not betray the U.S. because of his strong sense of ethics and duty. For this reason, I conclude that there is no issue of divided loyalty with regard to the individual.

2. Work in Foreign Country #2

At the hearing, a DOE Counterintelligence Official (DOE CI Official) testified that the individual’s decision to leave the DOE contractor and move to Foreign Country #2 appears to indicate that he is “ ‘free-floating’ – go where the work is, go where it is interesting . . . then go back” to the DOE contractor where there is more money. *Id.* at 209. Implicit in the DOE CI Official’s testimony is a concern that the individual’s ties to the U.S. are not that strong.

As an initial matter, it is worth noting that the individual’s work in Foreign Country #2 predated his obtaining U.S. citizenship. While it is true that the individual was motivated to take the job in Foreign Country #2 because he feared that the DOE contractor might lose funding, he elected to take a leave of absence from the DOE contractor rather than terminate his employment there. If anything, the individual’s short tenure with the research institute in Foreign Country #2 seemed to strengthen his desire to remain in the U.S. and seek U.S. citizenship. According to the individual, his work in Foreign Country #2 ultimately benefited the DOE contractor in getting funding for a certain proposal. *Id.* at 270-271. For the same reasons discussed in Section V. B. 1 above, I find that the individual’s decision to seek employment in 2009 in Foreign Country #2 at a time when he was still a citizen of Foreign Country #1 does not currently reflect on his allegiance to the U.S. government.

3. The Individual’s Connection to Foreign Nationals

The Report identifies the individual’s wife, mother, father, sister, mother-in-law and father-in-law as foreign contacts. Ex. 5. The DOE CI Official testified that, at a minimum, the individual and his wife are vulnerable to being targeted by adversarial intelligence services because of all their connections. Tr. at 208.

As an initial matter, at the time the Report was written, the individual’s spouse was a dual citizen. She subsequently renounced her citizenship with Foreign Country #1 and is currently only a citizen of the U.S. Second, for all the reasons discussed in Section V.A. above, I find that

⁷ The armed forces of Foreign Country #1 are adversarial to the U.S. Tr. at 207.

the individual's wife and her parents do not make pose a risk of foreign influence, exploitation, inducement, manipulation, pressure or coercion.

The individual's relationship with his parents is currently strained. His parents never accepted his wife, constantly criticizing her cooking and child-rearing skills. *Id.* at 179-180. Eventually, the wife filed for divorce in 2012 because the individual did not support his wife when his parents' voiced strong negative opinions about his wife. *Id.* at 278. When the individual told his parents that he was prioritizing his wife and children over them (the wife withdrew the divorce petition), his father stopped speaking to him and his mother only has a "very tense" relationship with him. *Id.* at 279. The individual only speaks with his mother very superficially for about twenty minutes every two or three weeks. *Id.* The individual's sister has elected not to speak to him either after his falling out with their parents. According to the individual, the sister "despises" him. *Id.* at 279. Based on the nature of the individual's relationship with his parents and his sister, it is unlikely that he will be susceptible to exploitation, inducement, manipulation, pressure or coercion by them. *See* Adjudicative Guideline B, ¶¶ 8 (a), (b), and (c). Furthermore, as noted in Section V.A. above, he testified convincingly that if anyone asked him for protected U.S. information, he would immediately report the request to the DOE contractor.

4. Summary

In the end, the question before me is whether the individual has mitigated the security concerns associated with the counterintelligence concerns regarding the individual's allegiance to the U.S. and his contacts with foreign nationals. As the DOE CI Official testified, it is difficult to know what is in a person's "heart and mind."

As discussed in the prior paragraphs, I find that the evidence supports a finding that he has mitigated those concerns. The individual presented compelling testimony that his loyalty lies with the U.S. His testimony in this regard is corroborated by several witnesses. The evidence shows that he is grateful for the freedoms afforded to him by this country, and he has fully embraced American culture and tradition (Tr. at 22, 306, 309-311, 322). He is reported by his colleagues and managers to be a person with a strong sense of ethics and duty, who will not yield to foreign pressures; someone who is immensely proud to be a U.S. citizen. *Id.* at 20, 22. He is credited with carefully following all rules, including those governing the handling of classified information. *Id.* at 38, 94. He is also described as serious about delivering on all commitments. *Id.* at 61.

Based on my evaluation of the individual and his witnesses' demeanor and credibility, I find that the individual's devotion to his children, his work, and the U.S. are so strong that I am convinced that he will resolve any conflict that might arise in favor of the U.S. *See Adjudicative Guidelines* ¶ 8(b). Considering the "total person" concept, I find that the individual's "heart and mind" is allied with the U.S. and that if he is ever faced with the choice of deciding between the interests of the U.S. and that of his foreign national family members or Foreign Country #1, he will choose the U.S. interests.

C. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including assessing the credibility of the witnesses and weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with that criterion. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Administrative Judge
Office of Hearings and Appeals

Date: June 19, 2014