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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: September 20, 2018) Case No.: PSH-18-0070
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Issued: January 3, 2019

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be granted.

I. BACKGROUND

The Individual submitted an electronic questionnaire for investigations processing (e-QIP) in connection with seeking access authorization on October 17, 2016. DOE Ex. 6 at 36. The Individual indicated on the e-QIP that his father, who is a citizen of another country, resided outside of the U.S. *Id.* at 21–22. The Office of Personnel Management (OPM) conducted an investigation of the Individual, which revealed that the Individual had provided an alias for his father on the e-QIP and represented that his father resided in another country when the Individual knew that his father resided in the U.S. *See* DOE Ex. 8 at 58. The local security office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on November 28, 2017. DOE Ex. 7 at i.

After the PSI, substantial security concerns about the Individual remained unresolved. Accordingly, the LSO informed the Individual, in a notification letter dated August 8, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter,

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

the LSO explained that the derogatory information raised security concerns under “Guideline B, Foreign Influence” and “Guideline E, Personal Conduct.” DOE Ex. 1.

The Individual requested an administrative review hearing pursuant to 10 C.F.R. Part 710. DOE Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing concerning the matter. At the hearing, the LSO introduced eight exhibits (DOE Ex. 1–8) into the record. The Individual presented the testimony of six witnesses, including himself. I received a transcript of the proceedings (Tr.) on December 31, 2018.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines B and E of the Adjudicative Guidelines.

Foreign contacts and interests may 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. Guideline B at ¶ 6. The Notification Letter asserted that the Individual’s father entered the U.S. illegally and that the Individual has lied about his father’s whereabouts when asked by authorities. The Individual’s contact with a foreign family member under circumstances in which that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and failure to report or fully disclose his association with a foreign person, justify the LSO’s invocation of Guideline B. *Id.* at ¶ 7(a), (c).

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide candid answers during national security investigative or adjudicative processes. Guideline E at ¶ 15. The Individual’s deliberate omission, concealment, or falsification of relevant facts from his e-QIP justifies the LSO’s invocation of Guideline E. *Id.* at ¶ 16(a).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of 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). 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 granting or restoring 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.

IV. FINDINGS OF FACT

The Individual does not contest the LSO’s assertions in the Notification Letter. DOE Ex. 2 at 2; Tr. at 48. The Individual’s mother and father are both citizens of a foreign country. DOE Ex. 6 at 19–21. They entered the U.S. without documentation in approximately 1993. DOE Ex. 7 at 15. The Individual’s father was deported at least once, and subsequently reentered the U.S. without authorization. *See id.* at 29–31; *see also* DOE Ex. 8 at 58.² The Individual’s father was arrested in May 2017, and was subsequently incarcerated, for helping other undocumented immigrants to obtain driver’s licenses. *See* DOE Ex. 7 at 21; *see also* DOE Ex. 8 at 58.

The Individual disclosed that his mother was residing in the U.S. without documentation and provided her U.S. address when completing his e-QIP, but untruthfully stated that his father resided in the foreign country and provided his father’s alias rather than his actual name. DOE Ex. 6 at 19–21; DOE Ex. 7 at 33. When asked by an OPM investigator during a June 2017 interview why he lied about his father’s name and whereabouts, the Individual said that he “did not want his father to get into trouble” and that “family comes before a job.” DOE Ex. 8 at 58–59. The Individual also admitted during the PSI that he and his father spoke on the phone “about every day” prior to his father’s incarceration, despite his previously telling the OPM investigator that he only spoke with his father monthly. DOE Ex. 7 at 21; *see also* DOE Ex. 8 at 58.

The Individual asserted during the PSI that he did not believe that he was susceptible to blackmail in the event that someone threatened to report his mother’s undocumented immigration status to authorities, but also admitted that he did not know what he would do in the event that someone attempted to blackmail him in that manner. DOE Ex. 7 at 34–35. Immigration authorities detained the Individual’s mother in late 2017 for assisting the Individual’s father in helping other undocumented individuals to obtain driver’s licenses, but released her after one week. *Id.* at 48. The Individual stated during the PSI that the authorities were deferring action against his mother pending the resolution of criminal charges against his father. *Id.* The Individual admitted during the PSI that his father had told him about the efforts to assist other undocumented individuals in obtaining drivers licenses as early as 2013, and that, although his father was “doing it the wrong way,” he viewed his father’s unlawful conduct as “a good thing, because he was helping out his people . . . so they won’t get in trouble [] when they [] get pulled over.” *Id.* at 49–50.

² The Individual reported during the PSI that his father was deported in 2005, while the OPM report indicates that the Individual’s father was deported in 2009.

At the hearing, the Individual offered testimony to the effect that he was young and frightened for his father at the time that he lied on the e-QIP, that he recognized his mistake and corrected it at the first opportunity, and that he had matured into a reliable and trustworthy person who would not put his family's immigration status before his loyalty to the U.S. Tr. at 50–51, 54–55. The Individual recounted how his father's prior deportation had placed his mother in economic jeopardy and that he was afraid that if he answered the e-QIP honestly that his father would be caught and that his mother would experience the same hardship. *Id.* at 50. The Individual testified that his outlook had changed in that he was only twenty-one (21) years old when he completed the e-QIP, but was now twenty-three (23) years old, had matured, and had a daughter of his own to support, and that he could not risk his career to protect his father in the future should his father reenter the U.S. *Id.* at 55–56.

The Individual further asserted that he volunteered the information about his father's whereabouts and alias in one of his two interviews with the OPM investigator and that this act demonstrated his integrity and honesty. *Id.* at 53–54. The Individual was not clear as to whether the OPM investigator already knew of his father's immigration status when he made his disclosure, answering a question as to the OPM investigator's knowledge by saying "I told him[,] yeah[,] he knew." *Id.* at 54. The Individual stated that he now takes clearance-holder responsibilities seriously and promised to act in a trustworthy manner in the future. *Id.* at 57–58.

The Individual offered the testimony of four professional colleagues concerning his character and personal growth since he completed the e-QIP in 2016. The first colleague testified that he met the Individual while working with the Individual's father, and that he spoke with the Individual several times each month at work-related meetings. *Id.* at 10–11. According to the first colleague, the Individual came to him before the Individual's second interview with the OPM investigator because the Individual's father had been detained. *Id.* at 11. The first colleague reported that he "kept telling [the Individual] . . . that he needed to come out, he needed to make sure that they knew everything, . . . that he was forthcoming . . . rather than wait until something else happened [] where the truth finally came out." *Id.* at 13.

A second colleague who works with the Individual on a daily basis, and who previously worked with the Individual's father, indicated that he attributed the Individual's "stupid mistake" on the e-QIP to a lack of experience. *Id.* at 24–25. The second colleague reported that the Individual is a hardworking employee who is eager to learn. *Id.* at 28–29. The second colleague opined that he believes that the Individual is loyal to the U.S. *Id.* at 29.

Two other colleagues testified that they had known the Individual professionally for two years, that the Individual had told them about his lie on the e-QIP, and that the Individual was an excellent worker. *Id.* at 21–25, 30–35. Each of these two colleagues asserted that the Individual has demonstrated integrity and trustworthiness in handling work independently. *Id.* at 21–22, 34–35.

The Individual's uncle testified at the hearing concerning the Individual's reliability and trustworthiness in his personal life. The uncle said that the Individual lived with him while the Individual was attending high school, and that he now sees the Individual approximately once per week. *Id.* at 39–40. The uncle recounted an episode from the Individual's youth to illustrate his trustworthiness in which the Individual borrowed the uncle's vehicle, damaged it on a pole, and

immediately acknowledged his mistake and sent his uncle a photo via text message. *Id.* at 42–44. The uncle asserted that, although the Individual had lied on the e-QIP, he believes that the Individual is trustworthy and that the U.S. has his undivided loyalty. *Id.* at 41–42.

V. ANALYSIS

A. Guideline B Considerations

OHA has previously evaluated the security risks associated with an individual’s contact with a family member who is an undocumented immigrant under Guideline B by considering whether a blackmailer might coerce the individual into disclosing classified information under threat by the blackmailer of revealing the family member’s presence to immigration authorities. *See Personnel Security Hearing*, PSH-16-0055 at 3 (2016) (considering whether an “Individual’s spouse’s undocumented status makes the Individual vulnerable to coercion and exploitation, since a hostile intelligence or terrorist operative could threaten to report her status”); *see also Personnel Security Hearing*, PSH-17-0073 at 5 (2018) (stating that “[t]he [] risk, given the individual’s marriage to an undocumented immigrant, is that he could be blackmailed or made vulnerable to pressure or coercion.”).³ Accordingly, I will examine the extent to which the Individual’s father’s immigration status makes the Individual vulnerable to blackmail in light of the Individual’s prior decisions.

Four mitigating factors under Guideline B are relevant in this matter:

- (a) 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 United States;
- (b) 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;
- (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;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts . . . from persons . . . from a foreign country.

Guideline B at ¶ 8(a)–(c), (e).⁴

In the aforementioned OHA cases concerning individuals’ undocumented immigrant spouses, OHA determined that the risks of blackmail were low because the spouses were pursuing lawful immigration status and the individuals had not intentionally misled investigators concerning their spouses’ immigration status. *Personnel Security Hearing*, PSH-16-0055 at 3–4 (2016) (describing

³ Decisions issued by OHA are available on the OHA web site located at <http://www.energy.gov/oha>.

⁴ The two other mitigating factors under Guideline B, concerning U.S. Government-approved work and routine business, financial, or property interests, are clearly not applicable to this matter. *See* Guideline B at ¶ 8(d), (f).

how the spouse's application for legal immigration status would render blackmail "ineffective"); *Personnel Security Hearing*, PSH-17-0073 at 5 (2018) ("It is notable that the LSO has made no allegation that the individual attempted to hide information about his wife's status during the OPM investigation, his PSI, or on any other occasion; indeed, he appears to have been consistently forthcoming. His openness about her status suggests that he accepts the risk that she could be deported.").

The record in the present case shows that the Individual's circumstances are significantly different from those of the individuals who mitigated security concerns associated with their undocumented immigrant spouses. Here, the Individual asserted during the hearing that the security concerns related to his father have been resolved because his father had been deported, but I am not convinced. The Individual's father was previously deported and reentered the U.S. without authorization. *Supra* p. 3. Moreover, the Individual testified that his mother is unemployed, and relies on his father for economic support. *Supra* p. 4. I believe it reasonably likely that the Individual's father will attempt to reenter the U.S. again without authorization if he deems doing so necessary to support himself and the Individual's mother. Should the Individual's father do so, the Individual will once again have to choose between his obligations as a clearance holder and his loyalty to his family.

The Individual's relationship with his father is a close one; the two were in nearly daily contact prior to his father's arrest and deportation, and the Individual previously exhibited significant devotion to his father. When asked by the OPM investigator why he lied about his father's name and whereabouts on the e-QIP, the Individual explained that "family comes before a job." *Supra* p. 3. The Individual asserted during the hearing that he disclosed his father's immigration status to the OPM investigator, and that he would not jeopardize his future by lying about his father again. *Supra* p. 4. However, the Individual's candidness with the OPM investigator came at least one month after his father had been arrested, by which time the OPM investigator may already have known of his father's immigration status, and was at the urging of a colleague. *See id.* The fact that the Individual waited until after his father was already in custody to disclose his misrepresentation on the e-QIP, and only then at the urging of his colleague, causes me to doubt that the Individual would disclose his father's presence were he to return to the U.S. in secret without authorization.

The Individual's relationship with his father is a strong one, not one that "is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation." *See* Guideline B at ¶ 8(c). Based on the significant chance that the Individual's father will someday attempt to reenter the U.S., I cannot find "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 United States" in the future. *See id.* at ¶ 8(a). The Individual's misrepresentations on the e-QIP, and failure to rectify those misrepresentations until after his father was arrested, establish that he has not "promptly complied with existing agency requirements regarding the reporting of contacts . . . from persons . . . from a foreign country." *See id.* at ¶ 8(e). The Individual's misrepresentations on the e-QIP, and the circumstances under which he disclosed his father's immigration status to the OPM investigator, differentiate him from the individuals who OHA previously decided had resolved security concerns under Guideline B

related to undocumented immigrant family members, and lead me to doubt that the Individual will “resolve any conflict of interest in favor of the U.S. interest.” *Id.* at ¶ 8(b).

Therefore, I find that none of the mitigating factors under Guideline B are applicable in this case. Accordingly, for the foregoing reasons, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline B.

B. Guideline E Considerations

The Individual does not dispute that he misrepresented his father’s name and whereabouts on the e-QIP, but argues that he promptly disclosed the misrepresentation and that he has matured and will conduct himself in a trustworthy manner in the future. These assertions invoke two potential mitigating factors under Guideline E.

An individual may mitigate security concerns under Guideline E if “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Guideline E at ¶ 17(a). The Individual submitted his e-QIP on October 17, 2016. DOE Ex. 6 at 36. The Individual did not take any steps to correct this misrepresentation until one of his interviews with the OPM investigator, the first of which was held in mid-June 2017. The passage of at least eight months between the Individual’s misrepresentation and his disclosure of the misrepresentation was not prompt. Moreover, the testimony of the Individual’s first witness urging the Individual to come forward “rather than wait until . . . the truth finally came out,” and the proximity of the Individual’s disclosure to the date of his father’s arrest, suggest that the Individual was motivated to disclose his misrepresentation by the likelihood that it would be, or already had been, discovered rather than by good faith. Accordingly, I find this mitigating factor inapplicable.

An Individual may also mitigate security concerns under Guideline E if “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgement.” Guideline E at ¶ 17(c). The Individual acknowledged the seriousness of lying on the e-QIP, but asserted that he had matured, that his need to support his daughter outweighed his loyalty to his father, and that his colleagues found him trustworthy and reliable. *Supra* p. 4. While the Individual’s youth at the time of his misrepresentation weighs in his favor, I am not convinced that the Individual’s circumstances have changed so significantly that he would act differently if confronted with the same situation in the future. The Individual’s daughter was born in 2015, well before his misrepresentation on the e-QIP. DOE Ex. 8 at 59. As the Individual’s daughter was not a significant enough factor in the Individual’s calculations to sway him against protecting his father in 2016, I see no reason why she would cause him to act differently were he placed in the same situation in the future. Furthermore, as described above, it is not clear that the circumstances under which the Individual misrepresented his father’s whereabouts on the e-QIP are unique in light of the possibility that his father may reenter the U.S. again and force the Individual to make the same decision between loyalty to family and obligations as a clearance holder. Finally, although the Individual’s witnesses established the high-quality of his work, reliability in performing work does not address the LSO’s concerns as to the Individual’s willingness to demonstrate reliability, trustworthiness, or good judgement with respect to all of his

obligations as a clearance holder. *See Personnel Security Hearing*, PSH-13-0124 at 12 (2014) (“the Part 710 regulations do not permit excellent behavior in one part of one’s life to exempt from scrutiny or to excuse conduct in another part of one’s life.”). Accordingly, I find this mitigating factor inapplicable.

Having found that none of the mitigating factors under Guideline E are applicable in this case, I concluded that the Individual failed to resolve the security concerns asserted by the LSO under Guideline E.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines B and E. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has failed to mitigate the security concerns raised under Guidelines B and E. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense or would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should not be granted. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals