



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



In the matter of:)	
)	
-----)	ISCR Case No. 06-26254
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro se*

February 19, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on August 14, 2002 (Government Exhibit 1). On July 11, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guidelines C and B of the Directive describing why DOHA could not make the preliminary affirmative finding 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. 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 revised adjudicative guidelines (AG) promulgated by President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 19, 2007. He answered the SOR in writing on August 10, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on September 6, 2007, and I received the case assignment on September 12, 2007. DOHA issued a notice of hearing on October 4, 2007, and I convened the hearing as scheduled on October 22, 2007. The Government offered Government Exhibits 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through I, without objection. DOHA received the transcript of the hearing (Tr.) on October 31, 2007. I granted Applicant's request to keep the record open until November 2, 2007, to submit additional matters. On October 29, 2007, he submitted Applicant's Exhibit J, without objection. The record closed on October 31, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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 Russian Federation (Russia). (Transcript at 12-18.) The request and the attached documents were not admitted into evidence, but were included in the record as Government Exhibits 5 through 13. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

The Applicant is 57, married, and has a Post-Graduate degree. He is employed by a defense contractor as a manager and seeks a Secret level clearance in connection with his employment in the defense industry. In his Answer to the SOR, dated August 10, 2007, the Applicant admitted factual allegations 1.a., 1.b., 1.d., 1.e., 1.g., 1.h., 1.i., and 2.a. of the SOR, with explanations. He denied allegations 1.c., 1.f., and 1.j. He also provided additional information to support his request for eligibility for a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

The Applicant's immediate family all live in the United States. This includes his wife, daughter, parents, son by a previous marriage and two sisters. Except for his son, who is a permanent resident of the United States, all of his relatives are also American citizens. By dint of Russian law, those relatives, like the Applicant, are still viewed as

Russian citizens as well. None of the Applicant's direct relatives were members of the Communist Party or were connected to the Soviet or Russian defense establishment.¹ The Applicant and his family members receive no funds of any type from the Russian government. (Transcript at 78-82, 95-105.)

The Applicant's mother-in-law, brother-in-law and step-son are residents and citizens of Russia. His wife is close to her mother and brother and talks to her mother by telephone on an approximately weekly basis. (Transcript at 83-90.) She is also close to her son by a prior marriage, and talks to him on a weekly basis. (Transcript at 90-94.) None of these relatives are members of the Communist Party or were connected to the Soviet or Russian defense establishment.

From 1972 to 1994 the Applicant was employed by a Research Establishment connected to the Soviet, and then Russian, Academy of Science.² During part of his time at the Research Establishment he held the Soviet equivalent of a Top Secret clearance and, after the fall of the Soviet Union, the Russian equivalent of a Secret clearance. His current employment is directly related to his work in Russia. (Transcript at 76-78.)

The Applicant has traveled to Russia in 2003, 2004 and 2006. During each of those trips, he presented his Russian passport to Russian authorities. Each of his trips to Russia have been in connection with his employment. (Government Exhibit 3, Transcript at 66-69.)

The Applicant has contacts with Russia. Accordingly, it is appropriate to discuss the situation in Russia at this time.³ I take administrative notice of the following facts. Russia is a federation made up of 21 republics. Its government has a poor human rights record and it is plagued with corruption, media suppression, politically motivated crimes, and human rights violations. Russia has a significant intelligence capability that it retained from the Soviet Union. Russia's intelligence efforts continue to increase in sophistication, scope, and number. It has an aggressive industrial espionage and intelligence collection program targeting sensitive and protected U.S. technology. Russia's government sells to other countries technology with application for weapons of mass destruction (nuclear and biotechnology) and missiles. It has provided technology and support to China, Venezuela, India, and Iran against U.S. wishes.

¹The Applicant's father fought in World War II as an officer in the Red Army. That fact has no current security significance. (Transcript at 99-101.)

²"Research Establishment" is not the real name of the organization.

³All of the following statements are supported by the documents submitted by the Department Counsel in support of her request for administrative notice. (Government Exhibits 5 through 13.)

Paragraph 2 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country ahead of the United States.

The Applicant was born in Russia (then the Soviet Union) in 1950. He and his immediate family emigrated to the United States in 1994 after applying for refugee status. (Applicant's Exhibits C, D, E, F and J; Transcript at 40-58.) The Applicant began working for his current employer in 1999. He became a naturalized American citizen in July 2001. (Government Exhibit 1, Question 3.) His wife was also born in Russia, and she also became a naturalized American citizen in July 2001. They were married in 1983, and have one child, who is also a naturalized citizen of the United States. They have about \$2 million in assets in the United States. (Transcript at 112.)

The Applicant has had a Russian passport during the entire time he has been an American citizen. In April 2005, the Applicant renewed this passport. (Government Exhibit 3, and Government Exhibit 4 at page 5.) He submits that he uses this passport only to travel to Russia at the behest of his employer to attend international conferences concerning his area of expertise. (Transcript at 60-69.) The Applicant argues that the Russian passport is just a visa to him, because there are stamps on there that identify him as a dual citizen of Russian and the United States. (Government Exhibit 2 at page 3; Transcript at 73-75.)

The Applicant is still a dual citizen of Russia and the United States. The totality of the record shows that the Applicant is very reluctant to credibly state that he is willing to renounce his Russian citizenship. The Applicant's primary reasons for not renouncing his Russian citizenship appears to be that he does not want to draw the attention of the Russian authorities to himself, as well as those reasons stated above concerning his passport. (Government Exhibit 4 at page 3; Transcript at 70-75, 128-130.)

The Applicant stated that he has discussed the situation regarding his passport with the security office of his employer. He is knowledgeable of the requirements set forth in the Directive concerning how a foreign passport may be retained and used. According to him, nobody has proposed a solution in accordance with those requirements. (Transcript at 120-124.)

Mitigation

The Applicant submitted letters and other documents. They show that the Applicant is a highly respected expert in his field, and that he has provided valuable services to the defense efforts of the United States. People who work with him currently believe him to be an honest man and recommend him for a security clearance. (Applicant's Exhibits C, D, E, F, G, H, and I.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 common sense 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

Finally, as emphasized by President Eisenhower in Section 7 of 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.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant is a dual citizen of Russia and the United States, and that he has a valid Russian passport in his possession (Guideline C); and that the Applicant has family members in Russia (Guideline B)

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows:

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.

The Applicant's entire immediate family lives in the United States. It is obvious that the Applicant spent a great deal of time, trouble and money to move his immediate family here. Except for his son, they are all American citizens. Except for his wife, as described below, I find that the fact they all may be viewed as Russia by dual citizens has no current security significance. Subparagraphs 1.b., 1.c., 1.d., 1.e. and 1.f. are found for the Applicant.

His wife, however, has connections to Russia. As described above, her mother, brother and son still live in Russia. His wife has many contacts with her relatives and it cannot be said that her relationship, as opposed to his, can be seen as being casual or the contacts infrequent.

In addition, there is the situation with the Applicant's long-time employment with the Research Establishment. To be sure, he made the choice to emigrate to the United States, a decision which had serious consequences for his family. The fact remains that he was a senior scientist in the Research Establishment for many years. Under certain circumstances, this involvement could be mitigated. However, combined with his continuing to hold Russian citizenship and passport, as set forth below, this relationship has a continuing security significance.

All of these connections must also be viewed in the context of the Russian government, and in particular that government's history of attempting to obtain classified and other information from American companies. To his credit, the Applicant repeatedly stated that he is a loyal American citizen, that he understands his responsibilities as a security clearance holder, and that he would not be a party to any attempt by the Russian government to obtain information from him. However, given the depth and extent of his connections with Russia, he has failed to meet his burden of showing an unequivocal connection to the United States.

Based on the evidence the Government has presented, the following Disqualifying Conditions apply to this case: 7.(a) *Contact 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;* (b) *connections to a foreign person . . . 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 . . . by providing that information;* and (d) *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.* I have also considered the information concerning the Russian government, provided by Department Counsel in Government Exhibits 5 through 10.

The Applicant has not provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: 7(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.;* (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 (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.* Paragraph 1 is found against the Applicant.

Paragraph 2 (Guideline C - Foreign Preference)

Turning to Guideline C, the Applicant has not mitigated the Government's concerns about his dual citizenship with Russia, and his continued possession and use of his Russian passport after becoming an American citizen. The concern is stated thus under this Guideline, *When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.*

Under any analysis of the evidence, it is obvious that the Applicant would like to retain his Russian citizenship and passport if at all possible. The Government well understands, and appreciates, that the Applicant does not wish to draw attention to himself. However, the Applicant did not even attempt to make a credible showing that he *expressed a willingness to renounce dual citizenship* as required by Mitigating Condition 11.(b). The reasons were somewhat obscure, but seem to revolve around his wife wanting to visit her parents.

Disqualifying Condition 10(a)(1) applies to the facts of this case: *Conditions that could raise a security concern and may be disqualifying include: (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.* (Emphasis supplied.)

Once again, the Government understands and appreciates that the Applicant would want to travel to Russia on his Russian passport in order not to draw attention to himself from a security standpoint. It is also understood that his employer would want a Russian speaking expert to go to symposia in Russia. That is the reason behind the two prongs of Mitigating Conditions 11.(d) and 11.(e). Neither the Applicant nor his company have attempted to obtain permission from the cognizant security authority for use of his Russian passport, as required by Mitigating Condition 11.(d). In addition, the Applicant's Russian passport has not *been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*. Accordingly, Mitigating Condition 11.(e) does not apply to this case. In light of the foregoing, Guideline C is found against the Applicant.

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. The Administrative Judge should 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) 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.” 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Two of the factors have the most impact on this case. First, I cannot find that there is the “presence or absence of rehabilitation and other permanent behavioral changes,” as set forth under AG ¶ 2(a)(6). The Applicant simply has not engaged in sufficient conduct which shows a preference for the United States instead of Russia. Such conduct might include his taking the actions concerning his Russian passport set forth in Mitigating Conditions 11.(d) and (e). In addition, he could state a credible willingness to renounce his Russian citizenship at an appropriate time in the future.

The lack of any of the actions stated above make it impossible for me to find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8).

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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:	AGAINST THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	For the Applicant
Subparagraph 1.c:	For the Applicant
Subparagraph 1.d:	For the Applicant
Subparagraph 1.e:	For the Applicant
Subparagraph 1.f:	For the Applicant
Subparagraph 1.g:	Against the Applicant
Subparagraph 1.h:	Against the Applicant
Subparagraph 1.i.:	Against the Applicant
Subparagraph 1.j.:	Against the Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge