

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant’s mother is a citizen and resident of Russia. He calls his mother daily and visits her about once a year. Applicant became a U.S. citizen in 2001, but he continued to use his Russian passport to visit his mother. He has destroyed his Russian passport and taken significant steps to renounce his Russian citizenship. He has mitigated the security concerns based on foreign preference, but he has not mitigated the concerns based on foreign influence. Clearance is denied.

CASENO: 07-00065.h1

DATE: 09/26/2007

DATE: September 26, 2007

In re:)	
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SSN: -----)	ISCR Case No. 07-00065
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT
Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant's mother is a citizen and resident of Russia. He calls his mother daily and visits her about once a year. Applicant became a U.S. citizen in 2001, but he continued to use his Russian passport to visit his mother. He has destroyed his Russian passport and taken significant steps to renounce his Russian citizenship. He has mitigated the security concerns based on foreign preference, but he has not mitigated the concerns based on foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On February 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference).

Applicant answered the SOR in writing on March 23, 2007, admitted all but one of the allegations, offered explanations, and elected to have his case decided on the record in lieu of a hearing. On June 22, 2007, he changed his election and requested a hearing. The case was assigned to an administrative judge on July 11, 2007, and reassigned to me on July 25, 2007. It was heard as scheduled on August 23, 2007. I kept the record open until September 6, 2007, to enable Applicant to submit additional evidence. I received his evidence on August 27, 2007. Several documents were in Russian, and I requested Applicant to translate them. I received the translations on September 5, 2007. Department Counsel did not object to the additional evidence (Hearing Exhibit (HX) II). The documents have been admitted as Applicant's Exhibits (AX) C, D, and E. DOHA received the transcript (Tr.) on September 12, 2007.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 59-year-old physics engineer for a defense contractor. He has worked for his current employer since December 2002. He has never held a clearance.

Applicant's supervisor submitted a statement on his behalf attesting to his professional qualities, maturity, and high level of integrity (AX B). At the hearing, a retired military officer with a top secret clearance, who has known Applicant since 2002 as a peer and a supervisor, described Applicant as "extremely competent," a valued team member, and a trustworthy person (Tr. 39, 44).

Applicant was born and educated in Russia. He obtained a Ph.D. in March 1980 from the P.N. Lebedev Physical Institute, the largest and oldest research center in Russian, regarded as the flagship of Russian science (Government Exhibit (GX) 1 at 11; GX 2). While a student at the Lebedev Institute, he worked as a junior research associate from February 1971 until his graduation, and then as a senior scientist until December 1992 (GX 1 at 28). He worked on government contracts and held a "low level" Russian clearance, roughly equivalent to a "confidential" clearance (Tr. 42, 56-57). Before attending the Institute, he worked as a junior research associate at the Moscow Institute of Electronics Engineering from July 1971 to January 1977 (GX 1 at 28).

Around 1992, Applicant concluded that Russian science was in disarray, and he came to the U.S. when he was invited by a U.S. university to join the faculty as a visiting scientist. After two

years he moved to another U.S. university, and he decided to stay in the U.S. because of the poor state of Russian science at the time (Tr. 57-58).

Applicant married a Russian woman in March 1977. They have two children, born in Russia. His son renounced his Russian citizenship at age 18, because he was concerned about his vulnerability to mandatory military service in Russia (Tr. 59). Applicant, his wife and two children, now ages 28 and 26, became naturalized U.S. citizens in 2001.

Applicant's mother is a citizen and resident of Russia. He calls her almost every day (Tr. 68). He visited her in 2000, and annually from 2002 to 2007, using his Russian passport (Tr. 65-66). He testified he used his Russian passport because Russia does not issue visas to Russian citizens who left the country after February 1992, and because his use of the Russian passport enabled him to enter the country without revealing anything about his work in the U.S. (Tr. 50).

Applicant intended to bring his 87-year-old mother to the U.S., but she was hit by a car in 2004, and her disability made her unable to timely submit her visa application. She also lost her birth certificate and was unable to obtain a duplicate due to the inefficiency and corruption of Russian officials. A friend is now helping his mother with the paperwork for her application (Tr. 52, 70). His mother is "practically recovered" from her injuries and is willing to come to the U.S. and live with Applicant and his family (Tr. 69).

Applicant's mother receives a pension and benefits from the Russian government (Tr. 63). During World War II, his mother was drafted and served in a medical unit for two years (Tr. 64). His mother has never visited him in the U.S. (Tr. 65). Neither Applicant nor any member of his family was a member of the Communist Party (Tr. 64-65).

Applicant does not consider himself a Russian citizen (Tr. 61). He testified he does not like or trust the current Russian government (Tr. 72). In July 2007, Applicant obtained the necessary forms to renounce his Russian citizenship. At the time of the hearing, he had completed the forms and was awaiting documentation from the Russian Revenue Service confirming that he had no tax and property liability in Russia (AX C, D, and E; Tr. 60-61).

In August 2007, Applicant surrendered his Russian passport to his facility security officer, who cut it into pieces and put the pieces in a burn barrel (AX A). He testified he will not be able to visit Russia again until he completes the process of renouncing his Russian citizenship (Tr. 66-67).

At the request of Department Counsel, and without objection from Applicant, I took administrative notice of relevant adjudicative facts about Russia (Tr. 24; HX II). The government of the Russian Federation consists of a strong president, a prime minister, a bicameral legislature, and a weak judiciary. The U.S. and Russia share common interests on a broad range of issues. The U.S. and Russia are engaged in reduction of strategic arsenals, and they share a basic goal to stem the proliferation of weapons of mass destruction. They are allies in the war on terrorism. Russia is a participant in efforts to dismantle North Korea's nuclear program, and takes part in the Middle East Peace Process "Quartet," along with the United Nations and the European Union.

On the other hand, Russia has an active, ongoing economic collection program targeting U.S. technology. It also has a strong intelligence organization retained from the Soviet Union, including

specialized, technical intelligence activities targeting the U.S. It has an intelligence service that works outside Russia by targeting researchers involved in national security and the environment. It operates a facility in Cuba targeting U.S. signal operations. It sells technology for missiles and weapons of mass destruction, for money and diplomatic influence, to other countries including China, Venezuela, India, and Iran. It has internal problems with terrorist activity including suicide bombings, assassinations, and kidnappings. It has a poor human rights record, with problems including government corruption, media suppression, politically motivated abductions, disappearances, poor prison conditions, and arbitrary arrest and detention. Dual U.S.-Russian citizens risk being viewed as Russian citizens and not allowed to leave Russia without a Russian passport.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App.

Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

CONCLUSIONS

Guideline B (Foreign Influence)

The SOR alleges Applicant’s mother is a citizen and resident of Russia (SOR ¶ 1.a), she decided to remain in Russia after Applicant had gained U.S. approval for her entry into the U.S. (SOR ¶ 1.b), and Applicant traveled to Russia on multiple occasions (SOR ¶ 1.c). It also alleges he worked at the Lebedev Physical Institute in Moscow, Russian, from 1977 to 1992, before he came to the U.S. (SOR ¶ 1.d). The concern under this guideline is 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.” AG ¶ 6.

Two disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by “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.” AG ¶ 7(a). Second, a disqualifying condition may be raised by “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.” AG ¶ 7(b). The evidence that Applicant’s mother is a citizen and resident of Russia raises the “heightened risk” in AG ¶7(a) and the “potential conflict of interest” in AG ¶ 7(b), shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is

associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). Applicant obviously is very close to his mother. His mother is dependent on the Russian government for her pension and other benefits. The government has a poor human rights record and actively targets the U.S. for industrial as well as military espionage. I conclude AG ¶ 8(a) is not established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant is deeply committed to the U.S. and has little use for the current Russian government, but he is also deeply committed to his mother and concerned about her welfare. I conclude Applicant has not carried his burden of establishing AG ¶ 8(b). No other mitigating conditions are relevant to the facts of this case.

Applicant presented uncontroverted evidence that his mother’s decision to remain in Russia, alleged in SOR ¶ 1.b, was the result of her injury and subsequent disability, and not due to any change of heart on her part or Applicant’s. I conclude any security implications of his mother’s failure to follow through on the plan to move to the U.S. have been explained away, and I resolve SOR ¶ 1.b in Applicant’s favor.

Because Applicant’s studies and employment at the Lebedev Physical Institute, alleged in SOR ¶ 1.d, occurred before he came to the U.S. and became a U.S. citizen, and there is no evidence that he has any continuing contacts with the Institute, I conclude his involvement with the Institute has minimal security significance. Although this conduct is alleged under Guideline B, the underlying premise of AG ¶ 11(c) (conduct occurred before the individual became a U.S. citizen) under Guideline C is relevant and is established by the evidence.

Guideline C (Foreign Preference)

The SOR alleges Applicant exercised dual U.S.-Russian citizenship (SOR ¶ 2.a) and used his Russian passport after he obtained a U.S. passport (SOR ¶ 2.b). The concern under this guideline is as follows: “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.” AG ¶ 9. A disqualifying condition may arise from “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,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant’s possession and use of a Russian passport after becoming a U.S. citizen establishes this disqualifying condition.

Since the government produced substantial evidence to raise the disqualifying condition in AG ¶10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Three mitigating conditions are relevant. First, security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). Second, they also can be mitigated by evidence that “the individual has expressed a willingness to renounce dual citizenship.” AG ¶ 11(b). Third, they can be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). All three mitigating conditions are established.

Dual citizenship is not a disqualifying condition, unless it is exercised. Thus, the allegations in SOR ¶ 2.a have little security significance standing alone. The allegations in SOR ¶ 2.b are premised on Applicant’s dual citizenship, thus incorporating and duplicating SOR ¶ 2.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicate allegations should be resolved in Applicant’s favor. *See* ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶ 2.a. in Applicant’s favor.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant’s age and maturity at the time of the conduct; (5) the 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. AG ¶¶ 2(a)(1)-(9). Some of these factors are discussed above, but some merit additional comment.

Applicant is a mature adult who has lived in the U.S. for 15 years. He and his family members have been U.S. citizens for six years. He is loyal to the U.S. and has little use for the current Russian government. He has destroyed his Russian passport and taken significant steps to renounce his Russian citizenship, even though it will make visits to his aging mother more difficult. Nevertheless Russia’s human rights record and its active intelligence activities targeting the U.S. are factors that weigh heavily against granting Applicant a clearance. If Applicant and his mother follow through with plans for her to move to the U.S., the security landscape may be significantly different for Applicant. *See* Directive ¶ E3.1.37-E3.1.41 (reconsideration authorized after one year).

After weighing the disqualifying and mitigating conditions under Guidelines B and C, considering the bonds of affection and obligation between Applicant and his mother, considering the nature of the Russian government and its intelligence activities directed at the U.S., and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign preference, but he has not mitigated the concerns based on foreign influence. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): AGAINST APPLICANT

 Subparagraph 1.a: Against Applicant
 Subparagraph 1.b: For Applicant
 Subparagraph 1.c: Against Applicant
 Subparagraph 1.d: For Applicant

Paragraph 2. Guideline C (Foreign Preference): FOR APPLICANT

 Subparagraph 2.a: For Applicant
 Subparagraph 2.b: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman
Administrative Judge