



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



In the matter of:	)	
	)	
	)	ISCR Case No. 17-00504
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: William R. Satterberg, Jr., Esq., Applicant's Counsel

December 18, 2018

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On March 31, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B.<sup>1</sup> The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on April 13, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to another Administrative Judge, and the hearing originally convened on September 15, 2017. (Transcript (TR#1.)) As it was unclear if Applicant received the Government's "discovery package," the hearing was continued. (TR#1 at page 20 line 19 to page 23 line 16.) This matter

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

was subsequently reassigned to me on December 13, 2017. The Defense Office of Hearings and Appeals (DOHA) had already issued a notice of hearing on October 27, 2017, scheduling the hearing for January 9, 2018. The hearing was convened as rescheduled. The Government reoffered Exhibits (GXs) 1 through 3, which were admitted without objection, and GXs 4 and 5 for Administrative Notice. Applicant testified on his own behalf. The record was left open until February 9, 2018, for receipt of additional documentation. DOHA received the second transcript of the hearing (TR#2) on January 18, 2018. Applicant offered three sets of documents, which I marked Applicant's Exhibits (AppXs) A through C, which were admitted without objection.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to Russia and to Ukraine, identified as GXs 4 and 5. The documents provide elaboration and context for the summaries. I take administrative notice of the facts as they relate to Ukraine included in the U.S. Government reports. (After a careful review of the evidence, it is clear that Applicant, his siblings and his mother-in-law have no connection with Russia.) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a, through 1.e, with some explanation. He denied SOR allegation ¶ 1.f. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 49-year-old employee of a defense contractor. (GX 1 at pages 5 and 12.) He has been employed with the defense contractor since 2010. (GX 1 at page 12.) Applicant emigrated from what is now Ukraine (formerly part of the Soviet Union), and became a U.S. citizen in December of 1991. (GX 1 at pages 6~7, and TR#2 at page 7 lines 18~20.) He is married to a naturalized U.S. citizen who also emigrated from Ukraine. (GX 1 at pages 20~21.) Applicant has four adult children, and a 13 year-old son. (GX 1 at pages 23.) Both Applicant's father and an uncle, because of their Pentecostal religious beliefs, were sent to Soviet prisons where they perished. (TR#2 at page 8 line 18 to page 9 line 23~27.) Applicant is a "deacon" for his Pentecostal church, as evidenced by a letter from his "Pastor." (AppX C at page 2.) Applicant net worth in the United States is about \$400,000. (TR#2 at page 40 lines 6~17.)

1.a. and 1.d. Applicant brother, who is married to a German national, is a dual national of Germany and Ukraine. (TR#2 at page 16 line 11 to page 17 line 10, and at page 17 line 25 to page 26 line 14.) This brother is a Pentecostal missionary, who at times travels to Russia, but presently resides "in Estonia or Latvia." (TR#2 at page 26 lines 7~14.) Since about 2007, Applicant has provided about \$100 each month in financial support for his missionary brother. (TR#2 at page 16 line 11 to page 17 line 10, and at page 17 line 25 to page 26 line 14.) In 2013, Applicant also provided this brother with a lump sum, one-time \$5,000 gift. (*Id.*)

1.b. Applicant's other brother, and his two sisters, are citizens and residents of Ukraine. (TR#2 at page 26 line 15 to page 33 line 5.) His brother "is working construction" in Germany. (TR#2 at page 26 line 15 to page 27 line 22.) Applicant's two sisters are both housewives living in the Ukraine. One is the mother of "18 kids," and the other "had 11" children. (TR#2 at page 26 line 15 to page 33 line 5.) None of these siblings have any connection with the Ukrainian government.

1.c. and 1.e. Applicant's 77 year-old mother-in-law is a "retired" citizen and resident of the Ukraine (TR#2 at page 33 line 7 to page 35 line 12.) Since about 1994, Applicant, through his wife, has provided about \$100 each month in financial support for his mother-in-law. (TR#2 at page 17 lines 10~21.) Applicant's mother-in-law has no connection with the Ukrainian government.

1.f. Applicant admits that he was investigated in 2015 for possible connections with a Russian/Armenian criminal organization. (TR#2 at page 22 lines 4~19, at page 39 line 8 to page 40 line 5, and GX 2.) No such connection was found, and Applicant denies any such connection. (*Id.*)

### **Notice**

I take administrative notice of the following facts: Ukraine is a republic with a semi-presidential political system. In 2014, the Ukrainian parliament approved a new government, which caused Russia to respond by seizing Ukraine's Crimean peninsula. Additional unrest occurred in 2014, involving thousands of pro-Russian protesters in eastern and southern Ukraine. In 2015, a ceasefire agreement established a de facto dividing line between Ukrainian government-controlled and separatist-held areas in Ukraine. (GX 5.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security

eligibility 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be “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**

### **Guideline B - Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also 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. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(a) contact, regardless of method, 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; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant has three siblings and a mother-in-law who are citizens of and reside in Ukraine. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 United States; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or 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.

Applicant's loyalties are clearly to the United States, where his immediate family lives, and of which he has been a citizen since 1991. Guideline B is found for 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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) 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.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by those who know him in the workplace and in his community. (AppXs A-C.) He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola  
Administrative Judge