



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



In the matter of: )  
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 REDACATED ) ISCR Case No. 17-04126  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

10/15/2018

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has been married since October 2015 to a Russian citizen whose daughter, parents, and half-sister are resident citizens of Russia. Applicant’s spouse co-owns an apartment in Russia with her daughter. The risk of undue foreign influence cannot be ruled out, despite Applicant’s lifelong ties to the United States. Clearance is denied.

**Statement of the Case**

On December 22, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B, foreign influence. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on February 12, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 18, 2018, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 23, 2018, I scheduled a hearing for May 16, 2018.

At the hearing, two Government exhibits (GEs 1-2) were admitted. A March 15, 2018 letter forwarding the proposed GEs to Applicant, a March 15, 2018 Request for Administrative Notice–Russian Federation, and a list of the GEs were marked as hearing exhibits (HEs I-III) for the record but not admitted in evidence. At the Government's request and without objection from Applicant, I agreed to take administrative notice of several facts pertinent to the Russian Federation (Russia). Seven Applicant exhibits (AEs A-G) were admitted in evidence without objection. Applicant and his spouse testified, as reflected in a transcript (Tr.) received on June 5, 2018.

I held the record open after the hearing, initially for three weeks, for Applicant to submit facts for administrative notice and additional evidence. At Applicant's request, I twice extended the due date for submissions. On June 22, 2018, Applicant timely submitted corrections to the transcript and two documents consisting of his comments on the oral testimony (AE H) and summaries of six decisions of DOHA administrative judges. On June 25, 2018, the Government expressed no objection to the clarifications to the transcript, but indicated that the decisions of DOHA judges in other cases are not binding precedent. I accepted the comments on the oral testimony as AE H, but informed the parties that I would consider the case summaries as a supplement to Applicant's closing argument.

### **Administrative Notice**

At the hearing, the Government requested administrative notice of several facts pertinent to Russia, as set forth in an Administrative Notice request dated March 15, 2018. The Government's request was based on excerpts of U.S. government publications, statements for the record before Congress, and press releases and statements from U.S. government entities as referenced in the document.<sup>1</sup>

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intention to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant confirmed his receipt of the Government's Administrative Notice

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<sup>1</sup> The Government's request for administrative notice was based on a May 11, 2017 statement for the record by the Director of National Intelligence before the U.S. Senate Select Committee on Intelligence (I); on the Office of the National Counterintelligence Executive's *Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*, dated October 2011 (II); on press releases and press statements from the U.S. Department of Justice, the U.S. State Department, and the U.S. Department of Homeland Security (III-XII); on the State Department's *Country Reports on Human Rights Practices for 2016-Russia*, and its crime and safety reports for Moscow for 2016 and 2017. I was provided extracts of the documents and the web addresses for the full articles.

request with extracts of the source documents. Applicant filed no objections to the facts set forth in the Government's Administrative Notice request. He accepted an opportunity to propose additional facts for administrative notice, but did not submit any facts for administrative notice other than some comments included in AE H.

Concerning the press releases of reported criminal activity of Russian agents and spies and of export violations on Russia's behalf, they were presented by the Government apparently to substantiate that Russia engages in espionage against the United States and actively pursues collection of U.S. economic and proprietary information. Neither Applicant, his spouse, nor any of her family members were implicated in that criminal activity. With that caveat, the facts administratively noticed are set forth below.

### **Findings of Fact**

The SOR alleges under Guideline B that Applicant's spouse is a Russian citizen (SOR ¶ 1.a); that Applicant's stepdaughter (SOR ¶ 1.b), parents-in-law (SOR ¶ 1.c), and two sisters-in-law (SOR ¶ 1.d) are resident citizens of Russia; that Applicant provides financial support to his stepdaughter in Russia (SOR ¶ 1.e); and that Applicant's spouse has an ownership interest in property in Russia (SOR ¶ 1.f). When he responded to the SOR allegations, Applicant admitted the foreign ties, but he also explained that his spouse has U.S. permanent residency, and that she submitted the paperwork required to continue her green card. He indicated that while both of his spouse's sisters are Russian citizens, one of her sisters has been a resident of the United States since 2008 and has U.S. permanent residency. Applicant explained that his stepdaughter is employed as an elementary school teacher in Russia, and he no longer provides her any financial assistance. Applicant admitted that his spouse shares ownership of her former residence in Russia with her daughter, but she intends to transfer full ownership to her daughter. Applicant explained that his spouse will have to renew her internal Russian passport to transfer the property, which she intends to do when they travel to Russia to see her daughter in 2018. (Answer.)

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 57-year-old computer systems engineer with a bachelor's degree in electrical engineering awarded in 1983. During his senior year of college, Applicant was in a U.S. military engineering program. On his graduation, he honorably served on active duty in the United States military until September 1987. He held a security clearance for his military duties and was trained to recognize potential threats from foreign sources. He was discharged from the inactive reserve in 1994. Applicant then spent his career in the commercial sector before commencing his current employment with a defense contractor in May 2016 after receiving an interim security clearance. (GEs 1-2; AE E; Tr. 131-136, 144-145.)

Applicant was married to his first wife from 1989 to 2009. He has two sons ages 26 and 16 and two daughters ages 23 and 19 from that marriage. He bought his present

home in 1990. (GE 1.) He started dating about six years after his divorce, but he traveled too much for the women he dated, some of whom he met on U.S. online dating sites. He then viewed several dating websites based abroad, including Asian, South American, Ukrainian, and Russian websites. (Tr. 147-149.)

In late July 2014, Applicant voluntarily resigned from his job to take a one-year break from employment to travel, including with his son, who was serving in the U.S. military. (Tr. 163.) In September 2014, Applicant began corresponding with his current spouse, a native Russian citizen, whose profile he accessed on a British dating website. She was born in 1971, when the country was part of the Soviet Union. She never joined the Communist party but was a member of a conservative youth organization while growing up. Her parents were teenagers when she was born, and they divorced when she and her twin sister were in elementary school. After her parents' divorce, Applicant's spouse and twin sister lived in their grandparents' home, initially with their mother. Their mother, who twice remarried, lived with them on and off. At times, she resided in the same city, and Applicant's spouse and her sister were able to visit their mother. Their father was out of their lives until they were in high school, and he began to tutor them in mathematics to prepare for their university studies. Their father had remarried and had a family of his own. (GEs 1-2; Tr. 46-48, 56-57, 70-71, 75-76, 100.)

Applicant's spouse was an exchange student in the United States during the 1990 to 1991 academic school year. After graduating from a Russian university with a degree in mathematics, she married in 1992, and had a daughter a year later. She and her first husband divorced in 2001. Her ex-husband is an electrical engineer and works for a manufacturing company. Applicant's spouse focused on raising her daughter and working as a senior manager in the commercial sector. In March 2013, Applicant's spouse and her daughter purchased the apartment in Russia in which her daughter currently resides. Applicant's spouse owns a 40% interest in the property. (GEs 1-2; AEs D, H; Tr. 53-56, 77, 80.)

After some email exchanges and Skype contact with his spouse, Applicant traveled to Russia to meet his spouse in person in October 2014. Because he stayed in her private home, he and his spouse registered his stay with the local police as was required by Russian law.<sup>2</sup> She showed Applicant around Moscow, and they had dinner with her daughter during that trip. After that visit, in November 2014, Applicant applied for a fiancée visa for his spouse to immigrate to the United States in case they developed a lasting relationship. She was reluctant because she wanted to stay in Russia until her daughter

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<sup>2</sup> Information from the U.S. State Department indicates that U.S. citizens traveling on U.S. passports are required to have a current U.S. passport and appropriate visa for entry to Russia, and to obtain a visa, there must be a Russian sponsoring organization or individual. Foreigners entering Russia are fingerprinted. Stays in Russia exceed seven days require registration of both visa and migration card with the General Administration for Migration Issues of the Ministry of Internal Affairs, and passports and migration cards must be carried at all times while in Russia. The migration card is provided by border officials on entry into Russia. See U.S. State Department's publication *Quick Facts—Russia*, update on March 30, 2018, which may be accessed at [www.state.gov](http://www.state.gov). Applicant's spouse as a Russian citizen presumably sponsored Applicant's entry.

had graduated from college and started a career, but agreed after Applicant promised to support her daughter until her daughter graduated from college. Applicant's intention was not to pressure his spouse. He wanted to start what he believed would be a multi-year process. (GE 1; AE G; Tr. 57-61, 106, 137-138.)

In January 2015, Applicant's spouse came to the United States on a tourist visa to see Applicant and meet his family.<sup>3</sup> She traveled on her Russian passport valid to 2020. In March 2015, she returned to the United States and stayed with Applicant for approximately six months. Applicant sent \$3,000 in financial support to his stepdaughter in college in Russia during that time. His stepdaughter was initially able to find only a part-time job on her graduation from college in June 2015. In September 2015, Applicant's spouse returned to Russia to complete the requirements for her fiancée visa. She immigrated to the United States on that visa in early October 2015, and she and Applicant married later that month. In December 2015, Applicant and his spouse sent her daughter \$600 as a Christmas gift. In March 2016, Applicant's spouse acquired U.S. permanent residency status valid for two years. (GEs 1-2; AEs A, C; Tr. 58-61, 91-92, 111, 114-117, 137, 164.) She began working part time as a receptionist at a school. (Tr. 63.)

In December 2015, Applicant lost his job in a layoff. In late March 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for a position with his employer that was contingent on him obtaining an interim security clearance. He disclosed that his spouse and her twin sister are Russian citizens residing in the United States with U.S. permanent residency, but that his spouse's daughter, parents, and a younger half-sister are Russian resident citizens.<sup>4</sup> He indicated that his spouse's daughter worked at a government school in Russia. She started that job in January 2016. (AE B.) Applicant explained that he had met his stepdaughter during his trip to Russia in October 2014. Applicant also indicated that his spouse's mother, who is retired, had visited him and his spouse in the United States in July 2015. Applicant had not met his spouse's father, who was employed by a Russian university. Applicant had limited contact with his spouse's half-sister in Russia and knew nothing about her employment. Applicant disclosed that his spouse has a foreign financial interest consisting of a 40% share in property worth about \$38,000 USD co-owned with her daughter in Russia. Applicant also disclosed that he had provided approximately \$3,400 in financial support for his stepdaughter before she graduated from college in 2015, but has since then only sent birthday and Christmas gifts. Applicant listed his foreign trip to Russia in October 2014 to meet his spouse. (GE 1.)

In April 2016, Applicant and his spouse traveled to her native city in Russia for ten days to visit her relatives, including her mother, half-sister, and paternal grandmother. (AE H; Tr. 61.) They spent most of their time there and went to a restaurant with her

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<sup>3</sup> Applicant's spouse apparently had a three-year tourist visa, which she obtained to visit her twin sister who has lived in the United States since 2008. (Tr. 116.)

<sup>4</sup> Applicant's spouse testified that her younger sister is her mother's daughter from her third husband. (Tr. 51.)

family, including her father and half-brother, to celebrate their October 2015 wedding. They stayed with his spouse's half-sister when in Russia. None of his spouse's relatives asked them for information that would be of possible interest to the Russian government, including its intelligence services. At Applicant's request, they went to his stepdaughter's school where he answered questions for some of the students.<sup>5</sup> Applicant's spouse translated for him because he does not speak Russian apart from a few words. Later that day, they met with some high school students who asked Applicant questions, primarily in English, about life, schools, and culture in the United States. (AE H; Tr. 61-68, 107-108, 142.)

In January 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant explained that he met his spouse through an online dating website, and in October 2014, he traveled to Russia to meet her in person. He listed in-person contact with his spouse in November 2014, January 2015, and from March 2015 to September 2015, before their marriage in the United States in October 2015. Applicant indicated that he had in-person contact with his stepdaughter three times, and contact with her by social media weekly. Applicant denied having met his father-in-law in person, and that he had any contact with his father-in-law.<sup>6</sup> He related that he had social media contact on a weekly basis with his mother-in-law in Russia and with his spouse's twin sister in the United States. As for his spouse's half-sister in Russia, Applicant indicated that he had in-person contact with her in June 2015, and contact by social media once a quarter. He denied any knowledge of her occupation or of her employment. Applicant indicated that his spouse still co-owned her former residence in Russia. (GE 2.)

In mid-January 2017, Applicant sent his stepdaughter \$1,350, of which \$1,000 was a combined birthday and Christmas present for her. The \$350 was Applicant and his spouse's contribution to the cost of a burial headstone for his spouse's grandmother. (AE C; Tr. 155-156.) In May 2017, his stepdaughter was awarded her master's degree. (AE B.)

Applicant's spouse has been employed full time since early 2017 for a commercial company. (Tr. 63.) She does not intend to return permanently to Russia. (Tr. 89.) She applied to renew her U.S. permanent residency, and on January 2018, the United States extended her conditional resident status for one year authorizing her continued employment and travel in the United States pending a decision on her petition to remove the conditions on her U.S. residency. (AE A; Tr. 90.) She has not notified the Russian

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<sup>5</sup> Applicant indicated in his Answer that his stepdaughter started permanent employment as an elementary school teacher in January 2016. Applicant's spouse testified that her daughter does not have a teaching degree. She is "a psychologist with the sake of kids." (Tr. 83.) It is unclear whether her daughter teaches or is a school psychologist at the government-owned elementary school.

<sup>6</sup> This denial of any in-person contact with his father-in-law as of January 2017 contradicts other evidence. At his hearing, Applicant and his spouse acknowledged that they traveled to Russia in April 2016. Applicant had not met his father-in-law when he completed his SF 86 in March 2016. He met his father-in-law at the party with her family at a restaurant in Russia in April 2016. (Tr. 107-108.)

authorities of her current address in the United States or of her permanent residency status in the United States.<sup>7</sup> (Tr. 110.) She intends to apply for U.S. citizenship in the future. (Tr. 118.)

Applicant's spouse exchanges greetings with her daughter in Russia every day. They have a very close relationship and engage in longer conversations every two weeks. She converses with her daughter in Russian. Her daughter knows little English. Applicant and his spouse plan to travel to Russia to visit her daughter in October 2018. Her daughter, who is still employed by the elementary school, has no plans to move to the United States and has never traveled to the United States. Two or three times, her daughter applied for a visa to travel to the United States to visit her mother and was denied. Applicant's spouse believes the United States denied a visa to her daughter because she is in "a risk category" in that she might not leave the United States were she to visit. Applicant's stepdaughter and her boyfriend live in the apartment that she co-owns with her mother. Since her daughter plans to stay in Russia, Applicant's spouse intends to transfer full ownership to her daughter. Applicant's spouse had a Russian internal passport that expired in January 2003. She understands that the best way to transfer her ownership share is to renew her Russian internal passport, and she must be in Russia to renew it. The Russian internal passport is the primary form of identification for Russian citizens in Russia. It expired when she turned age 45 in 2016. Applicant's spouse has no other financial assets in Russia. (AE A; Tr. 78-82, 86, 92-99, 108-110, 51, 157-160.) Her Russian passport for international travel bears an old address in Russia. She has not made any effort to update her residency information with Russian authorities. She does not believe that she has any requirement to notify the Russian Embassy. (Tr. 110-111.)

Applicant's spouse has a "pretty good relationship" with her mother. They exchange messages almost daily, usually about her mother's activities. Her mother has had no difficulty obtaining and renewing a visa for travel to the United States. She has visited Applicant and her daughter several times in the United States. She came to the United States most recently in December 2017 and stayed in Applicant's home for a couple of months. (Tr. 76-77, 140, 152-153.)

Applicant's spouse's contact with her father, who speaks English, has never been that frequent, and it has lessened over the years as she moved away. After her father's second wife died, Applicant's spouse called her father two or three times a year. She called her father only once in 2017. He does not contact her. He is a mathematics professor at a state-owned university in Russia. Her father publishes internationally in English and attends conferences abroad. To Applicant's spouse's knowledge, her father is unaware of Applicant's employment with a defense contractor. Applicant has had in-person contact with his father-in-law and spouse's half-brother on one occasion, at the wedding party in Russia in April 2016. (AE H; Tr. 50, 71-74, 99-102, 107.)

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<sup>7</sup>As of March 2018, the U.S. State Department reported that Russian citizens who are legal permanent residents of the United States must register their foreign residency with Russian authorities. See [www.state.gov](http://www.state.gov).

Applicant's spouse's twin sister has lived in the United States since 2008. She has Russian citizenship but U.S. permanent residency with no conditions. She is married to a U.S. native citizen, who is a Vietnam veteran and works as a computer programmer. She has a 10-year-old son who is a U.S. citizen. Applicant's spouse contacts her twin sister on a regular basis. Her sister does not work outside the home. Applicant and his spouse have visited her sister, but she has not visited them in their home. To Applicant's knowledge, his sister-in-law is the only one of her spouse's relatives who knows that he has applied for security clearance eligibility. (Tr. 83-84, 103, 153, 160-162.)

Applicant's spouse has a good relationship with her much younger half-sister in Russia.<sup>8</sup> They are in communication with each other once or twice a month. Her half-sister is unmarried but has a boyfriend. She speaks English. Applicant's spouse has a half-brother (her father's son from his second marriage) with whom she has contact twice a year. She has had communication with her father through her half-brother, who also speaks English. (Tr. 51-52, 85-87, 107.)

Applicant acknowledges that he cannot rule out the possibility of him being improperly approached for sensitive information in the future. He cites his intelligence, patriotism, and training, including on his reporting responsibilities, as evidence that he can be counted on to fulfill the obligations of the secret clearance needed for his employment. He recently completed refresher training about the behavioral indicators of someone who could be a potential threat to the United States. He does not discuss his job outside of the workplace. (Tr. 142-146.) He testified that he and his spouse are not a perfect couple in that they have their disagreements and struggle at times to blend their two cultures. (Tr. 164.)

Applicant received good to excellent ratings in all categories of performance rated for the period February 2017 through January 2018. (AE F.) Applicant's current salary is \$120,400 annually. His net worth in the United States is approximately \$400,000. Applicant estimated that his spouse's apartment in Russia was worth \$50,000 as of May 2018. (Tr. 158-159.)

### **Administrative Notice**

Russia is a highly centralized, authoritarian political system dominated by President Vladimir Putin. Its bicameral federal assembly lacks independence from the executive branch. The United States and Russia established diplomatic relations in December 1991 following the dissolution of the Soviet Union. The United States has long sought a full and constructive relationship with Russia and supported Russia's integration into European and global institutions and a deepened bilateral partnership in security cooperation to reinforce stability and predictability. In response to Russia violating Ukraine's sovereignty in 2014, the United States downgraded the bilateral political and military relationship and suspended most bilateral engagement with Russia on economic

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<sup>8</sup> Applicant's spouse testified that her half-sister was born in 1989 and is closer in age to her daughter. (Tr. 85.) Applicant gave a birth year of 1980 on his SF 86 for his spouse's half-sister.



issues. In addition to ongoing Russian aggression in Georgia and Ukraine, Russia is engaged in a campaign to undermine core Western institutions, such as NATO and the European Union to weaken faith in the democratic and free-market system. There is currently a low level of trust between the United States and Russia.<sup>9</sup>

In December 2014, Russia's Supreme Court issued a ruling recognizing the Islamic Group of Iraq and the Levant (ISIL, aka ISIS) as a terrorist organization and banning its domestic activity. In response to Russia instituting military operations in Syria in September 2015, ISIL and affiliated terrorist organizations have vowed retaliatory terrorist attacks in Russia. In response, Russian security services enhanced security measures at many public venues in Russia, including tourist sites. In October 2015, a Russian charter plane exploded in mid-air over Egypt due to an improvised explosive device attributed to a terrorist act. The Russian Federation continued to remain a target of international terrorist groups in 2016. As of February 2017, the U.S. State Department assessed Moscow as being a critical-threat location for crime and a high-threat location for terrorist activity directed at or affecting official U.S. government interests.

Serious human rights abuses persisted in Russia in 2016 and 2017 as Russia continues to train and equip pro-Russian forces in regions of eastern Ukraine since the occupation and "annexation" of Crimea in March 2014.<sup>10</sup> The United States considers Russia's actions in Crimea to be unlawful and in violation of Ukrainian and international law, and, in July 2018, called on Russia to end its occupation of Crimea. In 2016 and 2017, Russian authorities conducted politically motivated arrests, detentions, and trials of Ukrainian citizens in Russia. Russian authorities continued to restrict the ability of Russia's citizens to choose their government through free and fair elections and to exercise freedoms of expression, assembly, association, and movement. The government selectively employed repressive laws to harass, discredit, prosecute, imprison, detain, fine, and suppress individuals and organizations critical of the government. Other human rights problems included discrimination against minorities and persons with disabilities; allegations of torture and excessive force by law enforcement; substandard prison conditions; pressure on the judiciary by the executive branch; lack of due process; extensive official corruption; violence against women; and trafficking in persons.

Russia has a history of espionage against the United States. In July 2010, ten individuals, nine of whom admitted to being Russian citizens, were expelled from the United States after pleading guilty to conspiring to serve as unlawful agents of the Russian government within the United States. In January 2011, a former employee of the Central Intelligence Agency serving a prison sentence for a 1997 espionage conviction was sentenced to eight more years for passing information to Russia and receiving cash payments from agents of Russia through his son from 2006 to December 2008. In May 2016, an agent of Russia's foreign intelligence agency (SVR) working under non-official

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<sup>9</sup> See the U.S. State Department's Fact Sheet, *U.S. Relations with Russia*, dated April 23, 2018, which may be accessed at [www.state.gov](http://www.state.gov).

<sup>10</sup> The State Department's *Russia 2017 Human Rights Report* can be accessed at [www.state.gov](http://www.state.gov).

cover as a bank employee in Manhattan was sentenced to 30 months in prison for attempting to collect economic intelligence and recruit New York City residents as intelligence sources for Russia. He conspired with a trade representative of the Russian government in New York from 2010 to 2014 and with an attaché to Russia's Permanent Mission to the United Nations from 2012 to 2013. In July 2016, a dual citizen of the United States and Russia was sentenced to ten years in prison for acting as an unregistered Russian government agent and leading a scheme to illegally export controlled microelectronics technology with military applications to Russia.

Russian civilian and military intelligence services have been implicated in a decade-long campaign of cyber operations directed at the U.S. government and its citizens, which include spear-phishing campaigns targeting government organizations, critical infrastructure, think tanks, universities, political organizations, and corporations; theft of information; and public release of some of this information. Russia has recently assumed a more assertive cyber posture based on its willingness to target critical infrastructure systems and conduct espionage operations. The U.S. intelligence community is confident that the Russian government attempted to interfere with the U.S. presidential election in 2016 and directed the hacking of emails of U.S. political organizations and disclosure on sites like DCLeaks.com and WikiLeaks. In December 2016, the U.S. State Department declared *persona non grata* 35 Russian officials operating in the United States who were acting in a manner inconsistent with their diplomatic or consular status. This action was taken in response to Russia's interference in the U.S. election and a pattern of increased harassment of U.S. diplomats overseas over the past four years, including a significant increase in the last 12 months. The harassment involved arbitrary police stops, physical assault, and the broadcast on state television in Russia of personal details about U.S. personnel that put them at risk. The U.S. intelligence community believes Russia will remain a major threat to U.S. government, military, diplomatic, commercial, and critical infrastructure.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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 the 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that 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 *a/so* 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 articulated 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 that is 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.

Applicant’s spouse is a Russian citizen, who immigrated to the United States in October 2015 on a fiancée visa sponsored by Applicant. Her U.S. conditional residency status was renewed for one year in January 2018 while the United States considers her

petition to remove the conditions on her U.S. permanent residency. She has a close and continuing relationship with her daughter, who is a Russian resident citizen employed at an elementary school. She and her daughter co-own the apartment in which her daughter resides with her boyfriend in Russia. Her twin sister is a Russian citizen, who has resided in the United States since 2008 and has U.S. permanent residency. Her mother is a Russian resident citizen, who is retired and has visited her and Applicant in the United States on several occasions, most recently from December 2017 to approximately February 2018. Her father is a Russian resident citizen employed as a mathematics professor at a Russian university. She has a half-sister from her mother's third marriage, who is also a native Russian citizen, and close in age to her daughter.

Review of Applicant's contacts and connections to these foreign citizens through marriage is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or AG ¶ 7(e) or create a potential conflict of interest under AG ¶ 7(b). Those disqualifying conditions provide:

(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;

(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; and

(e) 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.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant has bonds of affection and obligation to his spouse, who, because of her Russian citizenship, is required by Russia to enter and exit the country on a Russian

passport. Her U.S. residency gives her some protections when she is in the United States, but the risk is heightened when she is in Russia to visit her family. When in Russia, she is fully accountable to Russian authorities for all obligations of a Russian citizen, and she plans to renew her Russian internal passport to transfer her share of the property co-owned with her daughter.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. See *e.g.*, ISCR Case No. 11-12659 (App. Bd. May 30, 2013). Applicant has had limited in-person contact with his spouse's daughter, which was only during his trips to Russia in October 2014 and April 2016. However, he maintains weekly contact by social media with her, despite the language barrier. He provided her some financial support in 2015, although not in an amount likely to raise the attention of Russian authorities. His spouse has an understandably very close relationship with her daughter, whom she contacts every day. Her daughter has tried and failed several times to obtain a visa to travel to the United States to visit her mother. Applicant's spouse believes that her daughter's age and risk that she would remain in the United States are the reasons for the visa denials, although the evidentiary record does not include any U.S. government documentation explaining the denials.

Applicant's mother-in-law had no trouble obtaining a visa, and she visited Applicant and his spouse in the United States several times, including as recently as December 2017 to approximately February 2018. Applicant's spouse messages her mother almost daily. Applicant's spouse also has a close relationship with her twin sister in the United States. Her sibling enjoys the protections of U.S. permanent residency when she is in the United States. She would have to comply with the obligations of her Russian citizenship when in Russia, but it is unclear whether she has any travel plans to Russia.

Applicant had in-person contact with his father-in-law only during the trip to Russia in April 2016. He has had similarly limited in-person contact with his spouse's half-sister. Applicant has no ongoing contact with his father-in-law. He has quarterly contact by social media with his spouse's half-sister, who has a good relationship with his spouse. Despite being hosted by this half-sister when in Russia in April 2016, Applicant is unaware of her occupation or employment. Applicant's spouse does not have a very close relationship with her father. In recent years, she contacted him only two or three times a year. She testified that she had contact with her father only one time in 2017.

Applicant and his spouse have traveled to Russia to visit her family, and they are likely to continue to do so to visit her daughter. They have travel plans for October 2018, and his spouse intends to renew her Russian internal passport when in Russia to facilitate the transfer of her ownership share of the apartment to her daughter.

With its mixed human rights record, and political, economic and military rivalry with the United States, it is conceivable that Russia would target any Russian citizen or former citizen living in the United States in an attempt to gather valuable information from the United States. Russian intelligence operatives seek classified or economic information

from U.S. businesses and/or government agencies. Applicant's foreign relationships and contacts through his marriage are sufficiently close to create a heightened risk and a possible security concern about his desire to help these relatives living in Russia and/or his spouse by providing classified information. AG ¶¶ 7(a), 7(b), and 7(e) are established.

Applicant and his spouse have sent her daughter monetary gifts since 2015, but they are no longer sending her any financial support. Applicant's spouse's 40% share of the apartment co-owned with her daughter in Russia triggers disqualifying condition AG ¶ 7(f). At a current value of \$50,000, his spouse's share would be only about \$20,000. However, the property is clearly important to her daughter as a financial asset and because it is her residence. AG ¶ 7(f) applies. It provides:

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence, or exploitation, or personal conflict of interest.

The burden shifts to Applicant to mitigate the risk of undue foreign influence that exists because of his familial ties through marriage to Russia, a country known to target U.S. citizens to obtain classified or sensitive information. AG ¶ 8(a) provides for mitigation as follows:

(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.

AG ¶ 8(a) does not apply. Russia's long history of aggressive espionage from within and outside the United States targeting classified and sensitive military and technological information, and its recent cyber hacking of emails of U.S. citizens and political entities, increase the risk that Applicant could find himself in a position of having to choose between the interests of his foreign family members and the interests of the United States. There is no evidence that Applicant's spouse's family members in Russia are politically involved. Her father is a professor at a state-owned university, and her daughter works at a government-owned elementary school. There is little risk that her daughter's work with children would be of interest to the Russian government, military, security, or intelligence services. There is no evidence that her father has any connection to the Russian military. However, her father's academic position at a state-run Russian university; his published work in theoretical mathematics; and his attendance at international academic conferences are factors that could raise the attention of Russian authorities.

There is no evidence that Applicant has any loyalty or affiliation to Russia or its institutions, but it is difficult to conclude that the bonds of affection and obligation to his

spouse and her immediate family members, including her only child and her mother, are so minimal to satisfy the first part of AG ¶ 8(b), which provides:

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant's relationships and loyalties in the United States may still be so deep and longstanding that he can be counted on to resolve any conflict in favor of the U.S. interest. In that regard, he is a native U.S. citizen who served honorably on active duty in the U.S. military, albeit over 30 years ago now. While he enjoys travel and adventure, the U.S. has been his home. He raised four children, all native U.S. citizens, during his first marriage. He has owned his current residence since October 1990 and has had a stable career in the United States with a succession of employers. He has no foreign assets. His spouse intends to reside permanently in the United States, and as evidence of her intention in that regard, she applied to renew the conditions on her U.S. permanent residency. Yet, it is also clear that Applicant and his spouse are likely to continue to have strong ties to her daughter, who intends to reside permanently in Russia and has already been repeatedly denied a tourist visa to come to the United States for reasons that are not clearly apparent in the record. Conceivably, Russian authorities could bring some pressure on his spouse's family members to gain influence or information from Applicant. People act in unpredictable ways when faced with choices that could be important to a family member.<sup>11</sup>

There is nothing untoward about Applicant's relationships and contacts with his spouse's family members in Russia. He has no ongoing contact with his spouse's father. AG ¶ 8(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," has limited applicability nonetheless, given the close bonds of affection and regular contact that Applicant's spouse has with her daughter and mother.

AG ¶ 8(f), "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual," warrants some consideration. The apartment that Applicant's spouse co-owns is not of significant financial value to Applicant. It is routine in nature. However, to facilitate transfer of her ownership share of the asset to her daughter, Applicant's spouse intends to renew her Russian internal passport when she is next in Russia. It could generate some inquiry by Russian authorities about her marital status and residency. The foreign influence security concerns are not fully mitigated.

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<sup>11</sup> As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member."

## 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d).<sup>12</sup> Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Although Applicant's spouse is employed in the United States, and she intends to reside here permanently, she has lived in the United States only since 2015. She has strong family, legal, and cultural ties to her native Russia. Applicant could be placed in an untenable situation of having to choose between the interests of his spouse or her family members and those of the United States. Perhaps at some future date, Applicant's family situation may present less of a risk. At this time, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

## 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 APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant

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<sup>12</sup> The factors under AG ¶ 2(a) are as follows:

(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.



## **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge