



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



In the matter of:)
)
 ---) ISCR Case No. 18-01028
)
 Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

07/29/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On April 2, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On May 1, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline B (Foreign Influence) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated June 9, 2018, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on February 8, 2019, and again on April 19, 2019, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on May 7, 2019. Although a response to the FORM was due on June 6, 2019, as of July 10, 2019, Applicant had not responded to the FORM. The case was assigned to me on July 10, 2019.

Rulings on Procedure

Department Counsel requested that the administrative judge assigned the case take Administrative Notice of certain enumerated facts pertaining to the Russian Federation (Russia), appearing in extracts of 16 written submissions. Facts are proper for Administrative Notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Russia in publications of the Department of State; the Department of Justice; the U.S. Central Intelligence Agency; the Office of the Director of Intelligence, National Counterintelligence and Security Center; the Office of the Director of National Intelligence; and the Director of National Intelligence.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents).

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the Russia subsection. However, while I do not reject the facts set forth in the nine press releases issued by the U.S. Department of Justice, any inference that

Applicant or his family participated in criminal activity was not argued by the Government and is specifically rejected.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, all of the factual allegations in ¶¶ 1.a. through 1.c., of the SOR. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor. He has been serving as senior service engineer with his current employer since November 2008. Applicant's primary education has not been described, and little information is known about his secondary education. He attended a technical university in Russia for six years, but did not receive a diploma. He has never served with the U.S. military or any other military. He has never held a security clearance. Applicant married in 1992. He has one daughter, born in 1993.

Foreign Influence

Applicant was born in 1972 to Russian parents residing in Russia. Educated in Russia, in 2001, he and his Russian-born wife immigrated to the United States through the U.S. Diversity Immigrant Visa Program, known as the Visa Lottery. He became a naturalized U.S. citizen in 2009. It is unclear when his wife was naturalized. When Applicant and his wife became naturalized U.S. citizens, they took an oath of allegiance to the United States. That oath is as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God. (8 C.F.R. § 337.1(a) (1995).)

Applicant's Russian-born daughter is also a naturalized U.S. citizen. They have resided in their own family home in the same U.S. city and county since at least October 2004.

Applicant's mother passed away in 2000. She had previously worked as a ticket distributor on a bus line. His nearly 79-year old father, now retired and in poor health as a cancer survivor, worked as a driver, mechanic, tire repairer, and glass installer for the

same employer as Applicant's mother. After their divorce, Applicant's father remarried. Applicant's nearly 73-year old stepmother was also born in Russia, and is in poor health as a cancer survivor. She retired from a non-government job not otherwise specified. Applicant's in-laws were Russian-born citizen-residents. His father-in-law, who passed away in 2018, was a retired vehicle driver. His mother-in-law, now in her mid-60s, after having suffered a stroke, is a retired postal worker. After Applicant's parents divorced, his mother's brother, his uncle, a Russian-born citizen-resident in his mid-60s, helped raise him. He assisted Applicant to come to the United States, and considered coming himself. He was or is a retired security officer at a mall. Applicant's father, stepmother, and uncle, as well as his mother-in-law, reside very far from the areas of turmoil in Russia: Chechnya and the Northern Caucasus. No member of Applicant's family has a past or current relationship with the Russian government, military, or intelligence services.

Applicant's contacts with his father (and step-mother) was previously monthly by phone, but it has diminished to one to two times per year. His contact with his mother-in-law is generally monthly, when his wife calls her mother. Applicant speaks with his uncle on a monthly basis. Applicant has not visited his family in Russia since he arrived in the United States in 2001, and he has no plans to return to Russia within the next decade, or more.

Applicant has furnished emergency financial assistance to various members of his family and extended family in Russia. After his mother-in-law suffered a stroke, he sent her \$300. Over the past ten years, he has sent her a total of \$600, an amount which he considers insignificant. Over the years, Applicant has sent his uncle various small amounts, and the total over the past ten years is less than \$1,000. He currently does not send any financial assistance to his family or extended family in Russia.

Russia

Russia is composed of 21 republics. The Government consists of a strong president, a prime minister, a bicameral legislature, and a weak judiciary often subject to political manipulation. It is a vast and diverse country with a population of 142 million people. It achieved independence with the dissolution of the Soviet Union on August 24, 1991, and remains a nuclear superpower that continues to develop politically, socially, and economically. On paper, Russia has recognized the legitimacy of international human rights standards, but it continues to be a "police state" where human rights abuses are rampant. There are numerous reports of human rights abuses, including law enforcement personnel engaged in torture, abuse, and violence to coerce confessions from suspects, with little accountability, despite the fact that the law prohibits such practices; widespread corruption within the police force; arbitrary arrest and detention; politically motivated arrests; abductions; and life threatening prison conditions. The media is largely state-controlled. There are restrictions on freedom of movement within the country, and all adults must carry government-issued internal passports while traveling internally, and they are required to register with the local authorities within a specified time of their arrival at a new location.

Russia's two main intelligence services are the Russian Foreign Intelligence Service (SVR) and the main Intelligence Directorate of the General Staff (GRU), both overseen by the Russian National Security Council and coordinated through the Permanent Interbranch Commissions of the National Security. Its intelligence capability is significant and focuses on collection of information from the United States. The Soviet Union engaged in a series of high profile espionage missions against the United States, and Russia has continued the tradition. Russia is one of the two most aggressive collectors of sensitive and protected U.S. technology and accounts for the majority of such targeting. Russia also provides technologies which could be used in the construction of weapons of mass destruction and missiles to other countries. It is a leading arms exporter, with major sales of advanced weapons and military-related technology to China, India, Iran, and Venezuela. Nevertheless, the United States and Russia share common interests on a broad range of issues, including counterterrorism and the drastic reduction of strategic arsenals.

On July 26, 2018, the National Counterintelligence and Security Center released its 2018 Foreign Economic Espionage in Cyberspace Report, in which it reported that foreign economic and industrial espionage against the United States continues to represent a significant threat to the United States' prosperity, security, and competitive advantage and identified Russia as one of the three most capable and active cyber actors tied to economic espionage and the potential theft of U.S. trade secrets and proprietary information. It reported that Russia uses cyber operations as an instrument of intelligence collection to inform its decision-making and benefit its economic interests, and that Russian intelligence services have conducted sophisticated and large-scale hacking operations to collect sensitive U.S. business and technology information.

The report noted that, "[a]n aggressive and capable collector of sensitive U.S. technologies, Russia uses cyberspace as one of many methods for obtaining the necessary know-how and technology to grow and modernize its economy." Other methods of collection include use of Russian commercial and academic enterprises that interact with the West; recruitment of Russian immigrants with advanced technical skills by the Russian intelligence services; and Russian intelligence penetration of public and private enterprises, which enable the Russian government to obtain sensitive technical information from industry.

On February 13, 2018, the Office of the Director of National Intelligence (ODNI) issued its Worldwide Threat Assessment of the U.S. Intelligence Community, Statement for the Record, in which it assessed that Russia will employ a variety of aggressive tactics to bolster its standing as a great power, weaken the United States, and undermine Euro-Atlantic unity; and that Russia will use a range of relatively low-cost tools to advance its foreign policy objectives, including influence campaigns, economic coercion, cyber operations, and measured military force. The ODNI also assessed that President Putin will likely increase his use of repression and intimidation to contend with domestic discontent over corruption, poor social services, and a sluggish economy; he will continue to manipulate the media and is likely to expand the Russian government's legal basis for repression; and during 2018, Russia will continue to modernize, develop, and field a wide range of advanced nuclear, conventional, and asymmetric capabilities

to balance its perception of a strategic military inferiority vis-a-vis the United States. Russia will also seek to maintain, and where possible, expand its influence through the former Soviet countries that it asserts are in its self-described sphere of influence.

The ODNI has reported that areas of highest interest to foreign intelligence collectors include energy/alternative energy; biotechnology; defense technology; environmental protection; high-end manufacturing; and information and communications technology. In March 2017, the U.S. Department of Justice indicted two Russian Federal Security Service officials and their Russian cybercriminal conspirators on computer hacking and conspiracy charges related to the collection of emails of U.S. and European employees of transportation and financial services firms. The charges included conspiring to engage in economic espionage and theft of trade secrets.

The ODNI has also reported that Russian efforts to influence the 2016 U.S. presidential election represent the most recent expression of Russia's long-standing desire to undermine the U.S.-led liberal democratic order and noted that "these activities demonstrated a significant escalation in directness, level of activity, and scope of effort compared to previous operations." The 2016 influence campaign reflected Russia's recognition of the worldwide effects that mass disclosure of U.S. Government and other private data have achieved in recent years. The ODNI assessed that Russian intelligence services will continue to develop capabilities to provide President Putin with options to use against the United States.

The U.S. Department of State Travel Advisory for Russia is Level 2 - Exercise Increased Caution, due to terrorism, harassment, and the arbitrary enforcement of local laws. The advisory directs U.S. citizens not to travel to the North Caucasus, including Chechnya and Mount Elbrus, due to terrorism and civil unrest; or to Crimea due to Russia's occupation of the Ukrainian territory and abuses by its occupying authorities. Terrorist groups continue plotting possible attacks in Russia, and may attack with little or no warning. U.S. citizens have been arbitrarily interrogated or detained by Russian officials and may become victims of harassment, mistreatment, and extortion. Due to the Russian government-imposed reduction on U.S. diplomatic personnel in Russia, the U.S. Government has reduced ability to provide services to U.S. citizens.

The Department of State has assessed Moscow as being a high-threat location for terrorist activity directed at or affecting official U.S. Government interests. Although Russia continued to prioritize counterterrorism efforts in 2017, it remained a target of international terrorist groups, particularly ISIS.

Russia has attempted to reassert its dominance in, and integration of, the former Soviet states and has generally been successful with Belarus and Armenia. It has remained unwelcomingly active in the internal affairs of several of its neighboring countries—former republics of the Soviet Union or occupied "independent countries"—such as Georgia, Ukraine, Azerbaijan, and Moldova, and has issued threats against Poland (a member of the North Atlantic Treaty Organization (NATO) since 1999), the Czech Republic (a member of NATO since 1999), and Estonia (a member of NATO since 2004). Russia maintains an extensive military presence in Crimea and is likely to

take further military actions in Crimea as part of its occupation of this part of Ukraine. The international community, including the United States and Ukraine, does not recognize Russia's purported annexation of Crimea. In response to Russia's violations of Ukraine's sovereignty, and other acts, the United States suspended most bilateral engagement with the Russian government on economic issues. Anti-American and anti-Western rhetoric is widespread in both official media sources and on social media.

In its 2017 Human Rights Report, the Department of State reported that Russia's occupation and purported annexation of Ukraine's Crimean Peninsula continued to affect the human rights situation in Russia significantly and negatively. Credible observers attributed thousands of civilian deaths and injuries, as well as widespread abuses, to Russian-led forces in Ukraine's Donbas region and to Russian occupation authorities in Crimea. Human rights groups asserted that numerous Ukrainian citizens remained in Russia as political prisoners.

The most significant human rights issues in Russia included extrajudicial killings; enforced disappearance; torture that was systematic and sometimes resulted in death and sometimes included punitive psychiatric incarceration; harsh and life-threatening conditions in prisons; arbitrary arrest and detention; lack of judicial independence; political prisoners; severe interference with privacy; severe restrictions on freedom of expression and the media; increasingly severe restriction on freedom of association, including laws on "foreign agents" and "undesirable foreign organizations;" and widespread corruption at all levels and in all branches of government. The government failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity.

Cybercrime is also a significant problem across Russia. The risk of infection, compromise, and theft via malware, spam email, sophisticated spear phishing, and social engineering attacks is significant. Telephone and electronic communications are subject to surveillance at any time without advisory. The Russian System for Operational-Investigative Activities permits authorities to monitor and record all data that traverses Russia's networks.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant 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.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) "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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (*See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).*)

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Id.*)

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (*See Exec. Or. 10865 § 7*) Thus, nothing in this decision should be construed to suggest that I have

based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

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:

- (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.

When an allegation under a disqualifying condition is established, “the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required.” (ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018))

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. (See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001)) Applicant's relationship with his father, stepmother, mother-in-law, and uncle in Russia, are current concerns for the Government. However, the security significance of these identified concerns requires further examination of Applicant's respective relationships with those family members who are Russian citizen-residents to determine the degree of "heightened risk" or potential conflict of interest.

In assessing whether there is a heightened risk because of an applicant's relatives in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, including the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States. (See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002)) In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B." (ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002))

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her family members, and this presumption includes in-laws. (ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)) Applicant has not denied that he has affection for his family members.

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." (ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)) Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is

known to conduct intelligence collection operations against the United States. The relationship of Russia with the United States, and the situation in Russia place a burden of persuasion on Applicant to demonstrate that his relationships with any family member living in Russia does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in Russia.

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Russia seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Russia has a significant problem with terrorism and crime. Applicant's family in Russia "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." (ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015))

Applicant's relationships with relatives who are living in Russia create a potential conflict of interest because Russian intelligence operatives could place pressure on or offer inducements to his family in Russia in an effort to cause Applicant to compromise classified information. These relationships create a potential heightened risk of foreign inducement, manipulation, pressure, or coercion. AG ¶¶ 7(a) and 7(b) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence under AG ¶ 8:

- (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;
- (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.

Applicant has substantial connections to the United States, having lived in the United States for nearly two decades. His wife and his child are naturalized U.S. citizens residing in the United States. He owns a residence in the United States.

Department Counsel argued that the presence of terrorist groups; the increased levels of terrorism, violence, and insurgency; and human rights problems in Russia demonstrate that a heightened risk of exploitation, coercion or duress are present due to Applicant's close ties to his family. Based on their various relationships, and the geographical locations of Applicant's family, there is a potential, but greatly reduced, risk – a "heightened risk" – of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

However, that risk is not generated solely by the Russian government, but also by terrorists striking out against the central Russian authorities and all foreigners. Applicant's family members are potential targets in this war on civilized humanity. The presence of terrorist groups and increased levels of terrorism, violence, and insurgency in Russia have also been described for events occurring on September 11, 2001, and more recently in Fort Hood, Boston, Paris, Nice, Orlando, San Bernardino, and New York City.

There is no evidence that Applicant's family members are or have ever been political activists, challenging the policies of the Russian government; that terrorists have approached or threatened them for any reason; that the Russian government or any terrorist organization have approached them; or that they currently engage in activities that would bring attention to themselves. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Russian government or the terrorists, which may seek to quiet those who speak out against them. They reside far from the areas of turmoil in Russia: Chechnya and the Northern Caucasus. Under these circumstances, the potential heightened risk created by their residence in Russia is greatly diminished. Under the developed evidence, it is unlikely Applicant 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. I am persuaded that Applicant's loyalty to the United States is steadfast and undivided, and that he has "such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶¶ 8(a) and 8(b) apply.

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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).)

There is some evidence against mitigating Applicant's situation. A Guideline B decision concerning Russia must take into consideration the geopolitical situation and dangers there. (See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).) Russia has a history of espionage against the United States and violence from terrorists, and the Russian government does not respect the full spectrum of human rights. Yes, Russia is a bad actor on the international stage. Applicant's 79-year-old father, 73-year-old step-mother, his uncle and mother-in-law, both of whom are in their mid-60s, reside in Russia. While they are more vulnerable to direct coercion or exploitation, because of their age and low political profile, as well as their geographic location within Russia, the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is relatively low.

The mitigating evidence under the whole-person concept is simply more substantial. Applicant is a 47-year-old employee of a defense contractor. He has been serving as senior service engineer with his current employer since November 2008. He, his wife, and their daughter have resided in the United States since they immigrated here in 2001, and they are all naturalized U.S. citizens. With his wife and child residing in the United States, there is a reduced "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion. While he still retains an affection for those of his family who have remained citizens and residents of Russia, his contacts with them have diminished substantially from where they were initially. Because of certain health issues, he sent modest sums of money to assist them during difficult times. Applicant has not seen any of his overseas family since he and his immediate family immigrated to the United States in 2001, and he has no plans to return to Russia within the next decade, or more.

Moreover, while terrorist activities occur in Russia, they are also active in the United States, creating a "heightened risk" here as well. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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 security concerns arising from the Government's foreign influence concerns.

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: FOR APPLICANT

Subparagraphs 1.a. through 1.c.: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge