



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



In the matter of:)	
)	
)	ISCR Case No. 18-01058
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly Folks, Esq., Department Counsel, and Nicole A. Smith, Esq.,
Department Counsel

For Applicant: *Pro se*
05/01/2019

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen from Russia, failed to mitigate the security concerns raised by her ongoing contact with family members and friends who are citizens and residents of Russia. Clearance is denied.

Statement of the Case

On May 30, 2018, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

¹ The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on November 28, 2018, I admitted Government Exhibits (GE) 1 through 3, without objection. Applicant did not submit any documentary evidence, but made statements during the hearing. DOHA received the transcript (Tr.) on December 7, 2018.

Procedural Matters

Request for Administrative Notice

At the hearing, Department Counsel requested that I take administrative notice of certain facts regarding the Russia. The written request and the attached documents is admitted as Hearing Exhibit II.

Findings of Fact

Applicant, 52, has worked for her current employer, a federal contractor, since May 2015, as a software engineer. She owned and operated her own business from 2005 to 2015, and worked for the same federal contracting company as a subcontractor. She completed a security clearance application, her first, in August 2016. Applicant, a naturalized U.S. citizen from Russia, disclosed contacts with individuals who are citizens of Russia, including her mother, two half-sisters, a niece, an uncle, as well as a friend with Danish citizenship and another friend with Russian citizenship. During her March 2017 subject interview, she revealed ongoing contact with 25 foreign nationals, including 12 who are citizens and residents of Russia. The SOR alleges that these contacts create a foreign influence concern.²

Russia has a highly centralized, weak multi-party political system dominated by the president. Russia has significant human-rights problems, marked by restrictions on civil liberties, discrimination, denial of due process, forced confessions, torture, other prisoner mistreatment, and the government's failure to prosecute officials who commit serious violations. Government officials also engage in electronic surveillance without proper authorization.³

Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advance weapons technologies beneficial to Russia's military modernization and economic development. Russia's intelligence services as well as private companies and other entities frequently seek to exploit Russian citizens or persons with family ties to Russia who can use their insider access to corporate networks to steal secrets. They also have offered financial inducements to U.S. government officials and citizens to encourage them to

² Tr. 17, 39-40; GE 1.

³ HE II.

compromise classified information. Russia's attempts to collect U.S. technological and economic information represent a growing and persistent threat to U.S. security.⁴

Applicant is from a Russian province bordering the Baltic Sea. She immigrated to the United States in 1996 with her second husband. The couple divorced in 2000. Applicant became a naturalized U.S. citizen in August 2002. She adopted her son in 2009 from a country in central Asia. He became a naturalized U.S. citizen in January 2010. Applicant's mother, 77, is a citizen of Russia, who has permanent resident status in the United States. She has lived with Applicant since 2009. She receives the majority of her financial support from Applicant, but also receives a small pension from the Russian government because of her 30 years' service as a teacher. Applicant believes the pension is approximately \$200 per month. Applicant has at least \$560,000 in U.S.-based assets including her home (\$300,000) and retirement savings (\$260,000). She earns \$156,000 annually. Applicant does not own any Russia-based assets, but does maintain some ties to Russia. She has traveled to Russia twice in the last ten years. Her last trip occurred between December 2016 and January 2017, during which she visited her paternal half-sister who resides in Applicant's hometown as well as the city where her maternal half-sister resides. She also visited friends in the city where she attended high school and college.⁵

Applicant's paternal half-sister, 46, is a cosmetologist. They do not maintain frequent contact, but communicate through a messaging application on their birthdays and holidays. Applicant visits her sister when she is in Russia. Applicant maintains closer and more frequent contact with her maternal half-sister. At the time Applicant completed her security clearance application, her half-sister was working as a secretary for a local government official, but she is currently unemployed. Applicant talks to this half-sister at least once per month. Applicant's half-sister and her 14-year-old daughter, come the United States every year to visit Applicant, her mother, and her son. Sometimes, Applicant pays for their trip and they stay in her home.⁶

When she completed the security clearance application, Applicant's maternal uncle was also a citizen and resident of Russia. He died in April 2018.⁷

In addition to her family members, Applicant maintains contact with high school and college friends through two separate social media groups. After winning a national math competition, Applicant was selected to attend an elite science and mathematics high school. She then earned admission into a prominent university where she studied applied mathematics and mechanics. Because of her education, she was not required to do compulsory military service. In her March 2017 subject interview, she identified 25 former schoolmates with whom she maintains ongoing contact. During the interview,

⁴ HE II.

⁵ Tr. 16-19, 39, 41-43, 48; GE 1.

⁶ Tr. 19-25; GE 1, 3.

⁷ Tr. 26; GE 1.

she was not able to supply details of her friends' residency or employment information. In a September 2017 subject interview, she provided additional details about her foreign contacts. At the hearing, she disclosed that she obtained employment information from them after disclosing she needed the information for her security clearance application.⁸

Of those individuals she reported, 11 are residents and citizens of Russia. Four of the eleven work as executives in private industry, including the banking and beauty sectors. However, the nature of two of the companies Applicant disclosed are unclear from the record and are not readily determined by a simple internet search. Three of her classmates work in STEM-related fields. One friend works as researcher for an unidentified geological company. Another friend is a computer programmer in private industry. One friend is a professor at Applicant's alma mater. Applicant claims that none of her former classmates work for the Russian government or on government contracts. Applicant states that she infrequently posts writings in the groups. She maintains occasional contact with some of the group members outside the group on birthdays. She may visit with these friends during her trips to Russia. She is willing to cease participation in both groups if required to maintain a security clearance.⁹

Policies

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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.

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

⁸ Tr. 33, 46-47; GE 2-3.

⁹ Tr. 27-38, 43-46; GE 3; HE III.

Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

“[F]oreign contacts and interests . . . are a national security concern . . . if they create circumstances in which the individual may be manipulated or induced to help a foreign person in a way that is inconsistent with U.S. interest or otherwise made vulnerable to pressure and coercion by any foreign interest.” An assessment of foreign contacts and interests should consider the country in which the foreign interest is located, including but not limited to, consideration such as whether it is known target U.S. citizens to obtain classified or sensitive information or associated with a risk of terrorism.

In this case, the concern is not just that Applicant’s foreign relatives may be vulnerable to government coercion or inducement; there is also concern that Applicant’s continued contacts with individuals, specifically former classmates, may make her vulnerable to exploitation. In the defense industry, foreign-born engineers and scientists play a critical role in developing and implementing new technology, and that technology may be of interest to others whose interests are contrary to the United States. Applicant works in a STEM field and has several Russian contacts who are professionals in that arena. U.S. intelligence has identified Russia as an active perpetrator of industrial espionage against the United States, often targeting individual’s with ties to the country. Accordingly, Applicant’s relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.¹⁰ Applicant’s ongoing contacts with former classmates from high school and college also 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.¹¹

While her Russian family members may not hold positions or participate in activities that create a risk a potential security risk; the same cannot be said of Applicant’s social contacts. While her familial and social contacts may be infrequent,

¹⁰ AG ¶ 7(a).

¹¹ AG ¶ 7(b).

they are not casual. Although Applicant demonstrated significant ties to the United States, her ongoing ties with residents of citizens and residents of Russia are too extensive to support a finding that Applicant would resolve any conflicts of information in favor of U.S interests. None of the foreign influence mitigating conditions apply.

Based on the record, doubts remain about Applicant having access to classified information. In reaching this decision I have considered the whole-person factor detailed in AG ¶ 2(d). Under the “clearly consistent with the national interest” standard, an applicant has a heavy burden of demonstrating extenuation or mitigation of facts with negative security significance. Because she failed to meet this burden, the foreign influence concerns raised in the SOR must be resolved in favor of the national security.¹²

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, Foreign Influence	AGAINST APPLICANT
Subparagraphs 1.a, 1.c:	For Applicant
Subparagraphs 1.b, 1.d, 1.e:	Against Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge

¹² ISCR Case No. 99-0601at 6 (App. Bd. Jan. 30, 2001); ISCR Case No. 99-0511at 8-9 (App. Bd. Dec. 19, 2000); ISCR Case No. 98-0252 at 7 (App. Bd. Sept. 15, 1999); *Dorfmont v. Brown*, 914 F.2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991)(no presumption in favor of granting or continuing a security clearance); Directive, Item E2.2.2. (any doubt must be resolved in favor of national security).