



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-01359
)
Applicant for Security Clearance)

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2019

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 25, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on June 22, 2018, and requested a hearing. The case was assigned to me on January 16, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on January 25, 2019, scheduling the hearing for February 11, 2019. I convened the hearing as scheduled.

Department Counsel requested that I take administrative notice of certain facts about The Russian Federation (Russia). The request was not admitted in evidence but was appended to the record as Hearing Exhibit (HE) II. The facts administratively noticed are summarized in the Findings of Fact, below. Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified. DOHA received the hearing transcript (Tr.) on February 26, 2019.

Findings of Fact

Applicant admitted all of the allegations but SOR ¶ 1.e, which he denied. His admissions are incorporated in my findings of fact. He is a 34-year-old, native-born U.S. citizen. He is married and expecting his first child in late 2019. He has owned his condominium in the United States since September 2015. (Tr. at 15, 21-22, 52; GE 1).

Applicant graduated from high school in 2003. He earned a bachelor's degree in 2007. He has worked for various DOD contractors since approximately 2013. He worked as a managerial data analyst since July 2016. He was granted access to public trust information in approximately 2008. He has never had a security clearance. (Tr. at 5-6, 8-9, 14-17, 69-70; GE 1).

Applicant's wife is a Russian-born citizen, residing with Applicant in the United States (SOR ¶ 1.a). She is 33 years old. They met at a restaurant in December 2013, where he was celebrating a friend's birthday and she was a customer. She arrived in the United States on a student visa approximately three months earlier, to study English to advance her career as a travel agent in Russia. He testified that she had never worked for the Russian government or military. They married in March 2014 and Applicant has since sponsored her to obtain U.S. citizenship. (Tr. at 15-16, 23-26, 45-52, 59, 62; GE 1).

Applicant's wife worked as a Russian language teacher for an American language education company for approximately two years. On occasion, she also worked at hotels. She attended several semesters of community college between approximately 2016 and 2018 to enhance her English skills, which have served as a barrier for her employment. Though she speaks English fluently, she has "a very strong accent." Applicant testified that "she doesn't have a regular job" and last worked in October 2018, and he is the primary breadwinner. She is aware that Applicant is seeking a security clearance. He testified that he is confident that she has not told her family in Russia of such. (Tr. at 15-16, 23-26, 45-52, 59, 62; GE 1).

Applicant's mother-in-law and grandmother-in-law are citizens and residents of Russia (SOR ¶¶ 1.c, 1.d). His mother-in-law is a 58-year-old retired state laborer. She receives a pension from the Russian government of approximately \$200 monthly. He and his wife give her approximately \$500 yearly. She owns her apartment in Russia, the value of which Applicant testified was approximately \$15,000 USD, and his wife stands to inherit it. Applicant and his wife visited her once yearly from 2016 to 2018 during the holidays, and they also Skype with her approximately once weekly. (Tr. at 15-17, 26-35, 54-63, 69; GE 1).

Applicant's grandmother-in-law is 72 years old. Applicant testified that he and his wife Skype with her quarterly. They also see her when they visit Russia. Applicant's grandfather-in-law is also a citizen and resident of Russia. He is elderly and "sleeps pretty much the entire time." He performed mandatory service in the Russian military. Both are retired state laborers. His grandmother-in-law receives a pension from the Russian government of approximately \$300 monthly. Applicant testified that none of his wife's family in Russia are aware that he is seeking a security clearance, and are only aware that he works with computers. (Tr. at 15-17, 26-35, 54-63, 69; GE 1).

Applicant's wife has a bank account in Russia (SOR ¶ 1.b). Applicant testified that his wife has had this interest-bearing account "like a CD" since 2016. She transferred this money from a previous bank account she had in Russia after that bank failed. His wife can access the money in her account a certain number of times throughout the year, and she has done so to help her mother. Its balance is approximately \$8,500 USD. He testified that it has been more convenient for his wife to leave this money in Russia and let it continue to accrue interest, but now that they are expecting a child they will likely bring it over to the United States. (Tr. at 35-39, 63-64; GE 1).

Applicant testified that neither he nor his wife have any other financial interests in Russia. Applicant purchased his condominium in the United States, in his name only, in 2015 for \$151,000. Its value as of the date of the hearing was \$190,000. He has a total of approximately \$123,000 in his 401k retirement account and individual bank account. His wife has approximately \$10,000 in her individual U.S. bank account. They also own a car. (Tr. at 52-54; GE 1).

Within a year of getting married, Applicant took an intensive week and a half Russian language course at a Russian entity in Washington, D.C. He wanted "to better bond with my wife" and have conversations with his mother-in-law without the need for a translator. He then took 15 to 20 private lessons over the course of one year. His teacher and tutor was an individual whom he "thought . . . was just a teacher" at the time and later became a Russian official. He testified that he did not learn the individual was a Russian official until later. He also interacted with the Russian official at a party at the Russian Embassy in Washington, D.C., to which he and his wife were invited since he was a student of the Russian entity. (SOR ¶ 1.e). (Tr. at 16, 21-22, 39-45, 64-68; GE 1).

Applicant testified that he and his wife attended poetry readings, musical recitals, and other cultural events at the Russian Embassy, through the Russian Orthodox Church and a cultural entity, three to four times per year. He testified that at times, he and his wife attended such events together or separately, but one not more frequently than the other. He testified that he last attended such an event at the Russian Embassy in early 2018 and his wife last did so that summer. He testified that he does not maintain regular contact with the above-mentioned Russian official, other than an occasional email inviting him and his wife to such events. He testified that he was unaware whether the individual was still a Russian official, but believed the individual still worked for the Russian entity. (SOR ¶ 1.e). (Tr. at 16, 21-22, 39-45, 64-68; GE 1).

Applicant testified that he incidentally met a former Russian official at such a cultural event. He described their contact as a “handshake” and he did not have any private conversation with this individual. He testified that he did not learn until later that this individual was expelled from the United States in 2018 for being an alleged Russian spy. He describes the contacts he has made through the Russian entity cultural events as “casual” and “clearly incidental, not sought out by me and aren’t continuing.” He testified that none of these contacts are aware that he is seeking a security clearance, though he knew that background investigators may have contacted the Russian official who was his language teacher and tutor as he listed this individual as a foreign contact on his security clearance application. (SOR ¶ 1.e). (Tr. at 16, 21-22, 39-45, 64-68; GE 1).

Applicant testified that neither he nor his wife and her family have been approached by any Russian authorities seeking information about what he does for a living. He would report any such attempt to the FBI and his Facility Security Officer (FSO). He has undergone security training at work every six months for the past two years and annual security training with previous employers since 2010. He testified that he has received favorable performance evaluations by his employer. (Tr. at 58-63, 70-71).

Russia

In 2018, the Office of the Director of National Intelligence (ODNI) 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. The ODNI 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; 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; and 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-à-vis the United States. The ODNI also assessed that president Vladimir Putin will likely increase his use of repression and intimidation to contend with domestic discontent over corruption, poor social services, and a sluggish economy and continue to manipulate the media and is likely to expand the Russian government’s legal basis for repression.

The ODNI has 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. It noted that “these activities demonstrated a significant escalation in directness, level of activity, and scope of effort compared to previous operations. It assessed that Russian intelligence services will continue to develop its capabilities to provide Putin with options to use against the United States.

The 2018 U.S. Department of State (DOS) travel advisory for Russia advised U.S. citizens to reconsider travel due to terrorism and harassment. U.S. citizens are

often victims of harassment, mistreatment, and extortion by law enforcement and other officials. In 2017, the DOS reported that the most significant human rights abuses in Russia included extrajudicial killings; enforced disappearance; torture that was systematic and sometimes resulted in death or 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 Russian government failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity.

Cybercrime is a significant problem in Russia. The risk of infection, compromise, and theft via malware, spam email, sophisticated spear phishing, and social engineering attacks are 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

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(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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." 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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern for foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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;

(e) shared 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; and

(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 nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided). AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant credibly testified that he does not maintain regular contact with any Russian officials. Though he and his wife last attended a cultural event at the Russian Embassy in Washington, D.C. as recently as 2018, he credibly testified that any contacts he made through the Russian entity cultural events are casual and not continuing. I find that AG ¶¶ 7(a) and (b) are not established for SOR ¶ 1.e and I find SOR ¶ 1.e in Applicant's favor.

Though Applicant's wife's U.S. citizenship paperwork is pending, she is still a Russian citizen. Her mother and grandmother are citizens and residents of Russia and they receive monthly pensions from the Russian government. Applicant and his wife talk to her mother weekly and to her grandmother quarterly, and they visited them in Russia once yearly from 2016 to 2018. They also provide her mother with approximately \$500 yearly. Applicant's wife stands to inherit her mother's apartment in Russia, the value of which was approximately \$15,000 as of the date of the hearing, and she continued to have a bank account in Russia with approximately \$8,500. Her assets in the United States consist primarily of her individual bank account, for which her balance was approximately \$10,000 as of the date of the hearing.

Russia is 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. 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 Russian intelligence services will continue to develop its

capabilities to provide Putin with options to use against the United States. Telephone and electronic communications are subject to surveillance at any time and Russian authorities are permitted to monitor and record all data that traverses Russia's networks. Applicant's in-laws and his wife's financial interests in Russia create a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), 7(e), and 7(f) apply.

I have considered all of the mitigating conditions under AG ¶ 8 and considered the following relevant:

(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, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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; and

(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.

Applicant's mother-in-law and grandmother-in-law are Russian citizens residing in Russia. His wife also has significant financial interests in Russia, as previously discussed. Accordingly, AG ¶¶ 8(a) and 8(f) are not established for the reasons set out in the above discussion of AG ¶¶ 7(a), 7(b), 7(e), and 7(f). Applicant and his wife maintain regular contact with her family in Russia. AG ¶ 8(c) is not established.

Applicant is a native-born U.S. citizen residing in the United States. He and his wife are expecting their first child in late 2019. He has substantial financial interests in the United States. He has received favorable performance evaluations and has undergone required security training with his employer. These are all factors that weigh in Applicant's favor. However, his ties to his family in Russia through his wife are also strong. As such, Applicant has not met his burden of demonstrating that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the foreign influence security 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge