



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



In the matter of: )  
)  
) ISCR Case No. 18-02550  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: Shirin Asgari, Attorney At Law, Griffith Young & Lass

June 19, 2019

**Decision**

LOKEY ANDERSON Darlene D., Administrative Judge:

**Statement of the Case**

On October 31, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on November 29, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 27, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on March 21, 2019, and the hearing was convened as scheduled on May 8, 2019. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant called one witness and offered nine exhibits, referred to as Applicant’s Exhibits A through I, which were admitted without objection.

He also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on May 28, 2019.

### **Procedural Rulings**

The Government requested I take administrative notice of certain facts relating to the Russian Federation. Department Counsel provided a ten-page summary of the facts, supported by twenty-three Government documents pertaining to Russia. (Government Exhibit 3). The documents provide elaboration and context for the summary. Applicant had no objection. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old and is married to a registered foreign national from Russia. He has a Bachelor's of Science degree in Mechanical Engineering. (Applicant's Exhibit G.) He holds the position of Program Manager with a defense contractor. Applicant has never held a security clearance before. He began working for his current employer in 2016.

Applicant is a native-born U.S. citizen, who was born on a U.S. Air Force Base. His parents, both his father and step-mother, are native-American citizens, who served in the U.S. Air Force while Applicant was growing up. As a "military brat", Applicant has traveled with his parents to a variety of duty stations around the world on military work assignments.

Applicant's step-mother served in the U.S. Air Force for twenty-three years before she retired in 2009. Applicant's father served twenty years until he retired in 2001. Both his father and step-mother currently work for government contractors and hold SCI-level clearances.

Applicant met a woman in Beijing, China, who later became his wife, while working as a traveling engineer for a U.S. company. She was a Russian national who was in China working on her Master's degree in Linguistics, and studying Chinese. Applicant explained that they really hit it off, spent time together and worked on their relationship after that. (Tr. p. 33.) Applicant and his wife were married in February 2016, and they have known each other for seven years. She will be applying for her full U.S. citizenship by the end of May 2019. Applicant's wife works as a paralegal for a law firm, where she has worked for the past two years. (Tr. pp. 44-45).

Applicant's father-in-law and mother-in-law are citizens and residents of Russia. His father-in-law served as a Major in the Russian military. His job centered around food service, and he stayed in longer than required in order to receive educational benefits. (Tr. p. 37.) He left the military in 2000 and he has not been involved with the Russian Government in any capacity since then. Applicant has met him on two occasions. He does not speak English and Applicant does not speak Russian and so communication is difficult. Applicant has no future plans to return to Russia. (Tr. p. 39.) He has no details concerning Applicant's employment nor has he even shown an interest.

Applicant's mother-in-law also served in the Russian military from 1990 to 1994 in order to obtain educational benefits. While in the military, she served as an administrative assistant. She currently works as an Engineer. Applicant does not believe the company is associated with the Russian Government in any capacity. (Tr. p. 41.) Applicant's mother in law does not speak English and is unable to communicate with the Applicant. She has no details concerning Applicant's employment.

In June 2014, on a trip to Moscow to visit his wife, in a passing social situation, Applicant was introduced to two friends of Applicant's wife who are citizens and residents of Russia. They are not friends of the Applicant. Applicant does not talk with them and has no contact with them. One of the women was employed as an administrative assistance for the Russian Government and was a friend of Applicant's wife, but they had a falling out and are no longer friends. Applicant's wife no longer speaks with her. The other woman, a friend of Applicant's wife, is currently studying in China for her own Master's degree. Applicant's wife no longer has contact with her. (Tr. p. 44.)

Applicant testified that he understands his responsibility while holding a security clearance to report any foreign contact and to never compromise national security under any circumstances. Applicant further stated that if he were placed in a situation where a foreign national was attempting to get information from him that he knew they were not entitled to, or that he should not be sharing, he would immediately report the contact to his security officer. (Tr. p. 45.)

Applicant's father, who holds a security clearance, testified that Applicant is trustworthy and responsible, and will not let his relationship with his wife or in-laws ever influence his dedication and loyalties to the United States. His father also states that he and his company security officer are cognizant of the Russian foreign contact concern in his family, and regularly monitors the situation to ensure that no security risk exists. (Tr. pp. 22- 31.)

Letters of recommendation from professional colleagues and friends of the Applicant attest to his professional behavior, strong work ethics, leadership skills, good moral character, honesty, trustworthiness and reliability. He is considered to be a stellar employee and a valuable team member. (Applicant's Exhibit A.)

Applicant's performance review for the period from 2017 and 2018 reflects that he "exceeds" job requirements. (Applicant's Exhibit E). While a student at a University, Applicant's technical paper was published online in 2011. (Applicant's Exhibit D.)

I have taken administrative notice of the following facts about the Russian Federation, also known as Russia. Russia is one of the most aggressive, capable, and active, high risk locations for crime that affects the U.S. government interests. Russian intelligence works diligently as collectors of sensitive U.S. technologies. Not all countries seek unauthorized access to classified information in order to harm the United States. Some countries seek such unauthorized access in order to reap the benefits of sensitive U.S. technology for themselves. Russia uses cyber operations as an instrument of intelligence collection to inform its decision-making and benefit its economic interests and Russian intelligence services have conducted sophisticated and large-scale hacking operations to collect sensitive U.S. business and technology information. Other methods of collection include, Russian commercial and academic enterprises interacting 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. The areas of highest interest to Russian intelligence collectors include energy/alternative energy; biotechnology; defense technology; environmental protection; high-end manufacturing; and information and communications technology. (Government Exhibit 3.)

Russia's recently reported 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 it is 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 Russian's recognition of the worldwide effects that mass disclosure of U.S. Government and other private data has achieved in recent years. Russia is continuing to develop capabilities to provide President Putin with options to use against the United States. (Government Exhibit 3.)

Human rights issues continue to be a significant problem including extrajudicial killings; enforced disappearance; torture that was systematic and sometimes resulted in death and sometimes included punitive psychiatric incarcerations; 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. (Government Exhibit 3.)

## Policies

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

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

## Analysis

### Guideline B - Foreign Influence

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

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

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(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) 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.

Applicant's foreign family members includes his father-in-law, and mother in law, who are citizens and residents of Russia. The evidence is sufficient to raise these disqualifying conditions.

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

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be

placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(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; 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.

Having considered the fact that Russia presents a heightened risk to the national security of the U.S., the nature of the relationships with Applicant's wife's family there do not pose a security risk. Applicant has little or no contact with his in-laws, and does not speak their language, nor do they speak his. Applicant was introduced to two Russian friends of his wife's. His wife no longer has any further contact with the one who was at one time associated with the Russian Government, and little or no contact with the linguist who is working toward her Master's degree and currently studying Chinese in Beijing. Applicant is an American citizen whose parents served life-time military careers. His parents currently work for defense contractors and hold high-level security clearances. The Applicant, as well as his father, is cognizant of the sensitivity of the relationship with his wife and the importance of protecting the national secrets. Applicant resides with his spouse, who is from Russia, but she too is ingrained into the American culture, and is simply awaiting to be eligible to become a citizen. There is nothing in the record to show that these foreign contacts pose a heightened risk of foreign influence. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has been 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

There is compelling evidence showing that Applicant's wife's family in Russian do not pose a heightened risk of foreign influence. It is noted that Russia continues to act as one of the most active, aggressive and capable collectors of intelligence targeting the U.S. However, there is sufficient information in this record to prove that Applicant's casual connections with his father-in-law and mother-in-law in Russia do not pose a security risk. Everything the Applicant has was given to him by the U.S., including his job and his education. Applicant has no plans of ever returning to Russia. Applicant's wife plans to become a naturalized citizen as soon as she is eligible. Applicant's relationship with Russia does not subject him to foreign influence that could cause him to make decisions that are against the national interests.

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 has mitigated the Foreign Influence security concern.

### **Formal Findings**

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

Paragraph 1, Guideline B:	FOR APPLICANT
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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge