



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 18-02641 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Kelly M. Folks, Esq., Department Counsel  
For Applicant: *Pro se*

04/25/2019

\_\_\_\_\_

**Decision**

\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the Guideline B, foreign influence concerns. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On November 13, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted under Executive Order 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), effective June 8, 2017.

Applicant answered the SOR on December 4, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 7, 2019. The evidence

included in the FORM is identified as Items 3 and 5 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on February 15, 2019. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed an exhibit (AE A), which stated general objections to the FORM. Applicant's objections to the "Facts" and "Argument" sections of the FORM are not proper objections, but rather are arguments supporting why he should receive a clearance. Those objections are overruled. He also objected to Department Counsel's request (Item 4) that I take administrative notice of certain facts concerning The Russian Federation (Russia) arguing that the documents had no relevance to his circumstances. That objection is overruled (See Procedural Ruling below). Items 3 and 5 are admitted into evidence. The case was assigned to me on March 28, 2019.

### **Procedural Ruling**

I took administrative notice of facts concerning Russia. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.

Administrative or official notice is the appropriate type of notice used for administrative proceedings.<sup>1</sup> Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports.<sup>2</sup>

### **Findings of Fact**

In Applicant's answer to the SOR, he denied the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

The SOR alleged Applicant's father and mother are citizens and residents of Russia. (SOR ¶¶ 1.a-1.b).

Applicant is 46 years old. He was born in Russia in 1972. He immigrated to the United States in February 1997. He received permanent resident alien status and then became a naturalized U.S. citizen in June 2006. He has worked for a federal contractor since January 2008. He is married for the second time. His wife is a dual citizen of the United States and Moldova. His former spouse was a dual citizen of the United States and Belarus. He has two minor children who are native-born U.S. citizens. He owns a home in the United States, but no further details are included in the record.<sup>3</sup>

---

<sup>1</sup> 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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986).

<sup>2</sup> See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

<sup>3</sup> Items 3, 5.

Applicant remains a dual citizen of the United States and Russia. He looked into renouncing his Russian citizenship, but declined to pursue that effort because of the amount of time it would take him to do so. He offered that he would do so if it was required of him. He previously held a Russian passport, which expired in 2008. He currently possesses a U.S. passport issued in 2016. Because Applicant chose to have his case decided based solely on the written record, I was unable to judge his demeanor and credibility in reaching this decision.<sup>4</sup>

## **Foreign Influence**

Applicant has the following relatives who are residents and citizens of Russia:

1. His mother. His mother is 78 years old. She is retired from her position at a hospital. She is not affiliated with the government or the military. Applicant is very close to his mother and tries to have weekly telephone contact with her.<sup>5</sup>

2. His father. His father is 85 years old. He is retired from his position at a children's education center. He is not affiliated with the government or the military. Applicant is very close to his father and tries to have weekly telephone contact with him.<sup>6</sup>

## **Character Evidence**

Applicant presented letters and citations describing his outstanding work in 2001-2003. He set up systems networks for DOD projects and was recognized for his initiative, professionalism, and effectiveness.<sup>7</sup>

## **Administrative Notice-Russia.**

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.

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.

---

<sup>4</sup> Items 3, 5.

<sup>5</sup> Items 3, 5; AE A.

<sup>6</sup> Items 3, 5; AE A.

<sup>7</sup> Item 2 (attachments thereto).

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

## **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 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, 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. According to AG ¶ 2(a), the entire process is a careful weighing of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

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

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

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

## **Analysis**

### **Guideline B, Foreign Influence**

¶ 7: The security concern relating to the guideline for foreign influence is set out in AG

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 indicates conditions that could raise a security concern and may be disqualifying 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; 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.

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship between Russia and the United States places a significant, but not

insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Russia do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Russia who might be coerced by governmental entities or pressured to assist Russia.

While there is no evidence that intelligence operatives from Russia seek or have sought classified or economic information from or through Applicant or his relatives living in Russia, it is not possible to rule out such a possibility in the future. AG ¶¶ 7(a) and 7(b) apply based upon Applicant's family members who are residents and citizens of Russia.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, 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 U.S.;

(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.

AG ¶ 8(a) does not apply. Applicant's position could cause him to be placed in a position to choose between the interests of his relatives and those of the United States. Applicant testified that he has regular contact with his relatives in Russia. AG ¶ 8(c) does not apply.

Applicant has not met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." Although he has been a U.S. citizen since 2006, he also remains a citizen of Russia. His wife is a dual citizen of the United States and Moldova. His two children are U.S. citizens. He is apparently a homeowner in the United States, but additional details about his connections to this country are lacking. He has weekly contact with his elderly parents in Russia. The evidence supports the conclusion that Applicant has substantial ties to his parents in Russia. Because of those ties, it is

unclear that he would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) does not 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 AG ¶ 2(a):

- (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, including his favorable character evidence. I also considered his ties to Russian parents are strong. The circumstances tending to support granting Applicant's clearance are less significant than the factors weighing towards denying his clearance. At this point, the evidence does not support his long-standing ties and connections to the United States. Therefore, he provided insufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence concerns were not mitigated.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.b:  | Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Robert E. Coacher  
Administrative Judge