



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 18-02702
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

07/09/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s ties to his native Russia because of his sister’s, widowed brother-in-law’s, and longtime friend’s Russian citizenship and residency are mitigated by his commitment to the United States, which includes his work as a translator for another department of the U.S. government. Clearance is granted.

Statement of the Case

On November 26, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B, foreign influence. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR through counsel on January 11, 2019. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 15, 2019, counsel withdrew his representation. On April 10, 2019, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 15, 2019, I scheduled a hearing for May 9, 2019.

At the hearing, three Government exhibits (GEs 1-2 and 4) were admitted. The Government submitted as proposed GE 3 a summary of personal subject interviews. The document was excluded on Applicant's objection for lack of the authentication required under ¶ E.3.1.20 of the Directive. A March 11, 2019 letter forwarding the proposed GEs to Applicant's then legal representative, and a list of the GEs, were marked as hearing exhibits (HEs I-II) for the record but not admitted in evidence. Seventeen Applicant exhibits (AEs A-Q) were admitted in evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on June 4, 2019.

Administrative Notice

At the hearing, the Government submitted for administrative notice as GE 4 several facts pertinent to Russia, as set forth in a Request for Administrative Notice—The Russian Federation, dated March 11, 2019. The Government's request was based on excerpts of U.S. government publications, including a report of the National Counterintelligence and Security Center, *Foreign Economic Espionage in Cyberspace 2018* and a State Department report, *Russia 2018 Crime & Safety Report: Moscow*, dated February 12, 2018. The Administrative Notice request was also based on a March 6, 2018 statement for the record by the Director of National Intelligence, and on several press releases from the U.S. Department of Justice concerning economic espionage activity against U.S. commercial entities in favor of Russian interests.

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intention to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant confirmed his receipt of the Government's Administrative Notice request with extracts of the source documents. Applicant filed no objections to the facts set forth in the Government's Administrative Notice request. He declined an opportunity to propose additional facts for administrative notice.

Concerning the press releases of reported criminal activity of Russian agents and spies and of export violations on Russia's behalf, they were presented by the Government apparently to substantiate that Russia engages in espionage against the United States and actively pursues collection of U.S. economic and proprietary information. Neither Applicant nor his family members and friend in Russia were implicated in that criminal activity. With that caveat, the facts administratively noticed are set forth below.

Findings of Fact

The SOR alleges under Guideline B that Applicant's sister is a citizen and resident of Russia (SOR ¶ 1.a); that Applicant's brother-in-law is a Russian resident citizen who retired from a department of the Russian government (SOR ¶ 1.b); and that Applicant has a close friend of 50 years who is a resident citizen of Russia (SOR ¶ 1.c). When Applicant responded to the SOR allegations, he admitted the Russian citizenship and residency of his sister, brother-in-law, and longtime friend. He indicated that his sister works as a lawyer in Russia, but not for the Russian government, and that he has only casual and infrequent communication with her. Applicant explained that his brother-in-law is a retired widower, who previously worked for a private stock company that provides electricity to a local community. He stated that his brother-in-law never worked for the Russian government and that he has had no contact with him in the last five to ten years. Applicant admitted that he maintained a friendship with his old schoolmate, but they communicate only a few times a year. Applicant denied that these Russian resident citizens could be a source of coercion or influence for him, citing his "extensive" loyalty and ties to the United States since 1991.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 58-year-old Russian-language interpreter. He was born in Russia and has one sibling, a sister, who works as a private attorney in Russia. His father was an engineer and his mother was a high school foreign-language teacher before their deaths in 1992 and 2002, respectively. Applicant received a bachelor's degree in linguistics with honors from a Russian university in 1983. In December 1983, he and his spouse married in Russia. Also a native of Russia, Applicant's spouse was educated as a physician in Russia. He and his spouse have two sons. Their older son was born in Russia in April 1985. In 1987, Applicant earned a doctorate degree in philosophy in Russia. (GEs 1-2; AEs B-C, F-G; Tr. 52-56.)

In September 1991, Applicant came to the United States as a short-term visiting scholar at a public university. He came to the United States on a J-1 visa. He decided to stay in the United States because of the better opportunities here for his family. He converted his visa status to student (F-1), and in the fall of 1992, he began studies at the public university toward a Master of Business Administration degree, which was awarded to him in September 1994. (GE 2; AEs B-C, H; Tr. 41, 99.) In August 1992, Applicant's spouse and son joined him in the United States. (AE B; Tr. 57.) In 1995, Applicant was hired by the university to administer a U.S.-government grant-funded United States-Russia partnership program where he managed economic development and professional training toward making Russia's academic institutions and political system more democratic. (AE B; Tr. 44, 96.) The program lasted two years, and Applicant traveled to Russia from March 1995 to May 1995, in October 1995, from January 1996 to February 1996, and from May 1996 to June 1996 in support of the program. His university employer funded the trips. (GE 2; Tr. 43-44.) As part of a trade initiative, he went to Russia in August 1998 and August 1999. (GE 2.) He went to Russia for both business and pleasure in

August 2000. He traveled to Russia annually for “tourism” in August 2001, August 2002, and September 2003. (GE 2.)

From 2000 to 2005, Applicant was employed in the United States as a program director for a small non-profit institute involved in training international participants about building democratic institutions and free-market economies. In approximately 2000, Applicant began working as an independent contractor providing Russian-language interpreter and translation services to private and public clients, including federal and state government agencies and departments. (GE 1; AEs B-C.) He successfully passed the U.S. State Department’s Russian aptitude test in 1992, seminar interpreting test in 2000, and conference interpreting test in 2004. As a federally-qualified and state-certified court interpreter, Applicant passed several background checks to provide linguistic support in federal and state courts. (AE B; Tr. 42-43.) His then employer sponsored him for U.S. permanent residence. He recalls receiving his “green card” in 2001. (Tr. 96.)

Applicant has provided part-time interpreter services or linguist support on a contract basis for department X of the U.S. government from June 2000 to at least May 2019 (GEs 1-2; AEs A, Q); for department Y of the U.S. government from January 2005 to June 2015 (GEs 1-2); and for a national laboratory involved in nuclear security issues from July 2007 to at least December 2017. (GEs 1, 3; AEs B-C; Tr. 63-65.) In 2004, and again in 2009, department X of the U.S. government certified Applicant for a public trust position after determining that he was a moderate risk. (GEs 1-2; Tr. 62-63.) Most of his work for department X and all of his work for department Y of the U.S. government has been in the United States. (Tr. 64, 66)

In October 2008, Applicant and his spouse’s younger son was born in the United States. (GEs 1-2; AEs B, J; Tr. 56.) Applicant’s spouse and Russian-born son acquired U.S. citizenship by naturalization in March 2007. (AEs I, K.) In April 2009, Applicant became a naturalized U.S. citizen. (GEs 1-2; AE L.) He was the main petitioner for U.S. citizenship for him and his family members, and he has no explanation for the delay in him obtaining his U.S. citizenship other than a huge backlog in processing petitions. (Tr. 55.) Applicant obtained a U.S. passport in May 2009 valid for ten years. (GEs 1-2.) He testified that he assumed when he took the oath of naturalization in the United States that he was renouncing his Russian citizenship. (GE 2; Tr. 59, 94.)

Applicant traveled to Russia on business for the national laboratory in October 2009, and for six days in January 2010 as an interpreter for a U.S.-government delegation, under the sponsorship of the national laboratory. (GE 1; Tr. 71.) He indicates that he traveled on his U.S. passport in October 2009, but on his Russian passport in January 2010. (GE 2.) His U.S. passport issued in May 2009 bears a re-entry stamp for the United States dated October 30, 2009, but no obvious entry stamp for Russia or visa for Russia in that passport. He did not submit in evidence a Russian passport that would cover that trip or the trip in January 2010, apparently because the Russian Consulate retained it. (GE 2.) It may be that he took both U.S. and Russian passports on his trip in 2009 and used his Russian passport to enter Russia, although it is unclear. Applicant testified that after he obtained his U.S. citizenship, he requested a visa from the Russian

Consulate to travel to Russia on his U.S. passport for his interpreter work. He was advised that he could not obtain a visa and that he had to extend his Russian passport to travel to Russia. (Tr. 58.) Applicant's Russian passport was last renewed in June 2013 for five years, but he then did not take the trip to Russia. He did not renew his Russian passport when it expired in June 2018. (Tr. 58.) He regarded his renewed Russian passport as a travel document only if needed to enter Russia and not as an indicia of Russian citizenship. (Tr. 95.) Applicant does not expect to travel to Russia any time soon. (Tr. 62.) Applicant has not traveled to Russia since the trip in January 2010. (Tr. 71-72.)

In recent years, Applicant served as an interpreter for department X of the U.S. government on such topics as emergency preparedness and crisis response, management of national parks, fundraising self-sufficiency for non-governmental organizations, combating violent extremism, civic activism, external trade practices, and disability access involving Russia or Kazakhstan. (AE C.) He completed a job assignment for department X as recently as April 2019. (Tr. 65.) Applicant had an opportunity to travel with a state delegation to Russia in 2018, but his Russian passport had expired so he did not take the job. (Tr. 58-59.)

In December 2017, Applicant was offered a full-time Russian-language linguist position with a defense contractor to perform interpreter services for the U.S. military during a one-year deployment to Iraq at \$100,000 in annual salary. The company approached him. The job was contingent on him obtaining a security clearance.¹ (GE 2; Tr. 35, 67.) On December 6, 2017, Applicant completed and electronically certified to the accuracy of a Questionnaire for National Security Positions (SF 86), which he then signed on March 1, 2018. He disclosed his dual citizenship with Russia and the United States, and his possession of passports from both countries. He disclosed his sister's Russian citizenship and residency and her self-employment as a lawyer. He indicated that he had annual contact with her by telephone or electronic means. Applicant responded affirmatively to an inquiry concerning whether he had close and/or continuing contact with a foreign national within the last seven years with whom he or his spouse was bound by affection, influence, common interests, or obligation. He indicated that he had annual contact by electronic means to as recently as July 2017 with his "best school friend" in Russia. (GE 1.)

On January 18, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He expressed his intention to renew his Russian passport because he would need it as a travel document to enter Russia should he ever be required to travel to Russia for work. He also stated that he was prepared to relinquish his Russian passport or have the company or agency hold his Russian passport during the duration of his assignment if his job required him to do so. (Tr. 60-61.)

¹ Applicant testified that the job offer "is no longer kind of valid, and [he is] not going to pursue it." The Government confirmed that the company had not withdrawn its request for a security clearance for Applicant, and Applicant indicated that he would consider a short-term interpreter assignment. (Tr. 35-38.) Adequate justification existed for the hearing and adjudication process to continue.

On March 1, 2018, Applicant had a counterintelligence-focused security screening interview. He explained that he had taken no steps to renounce his Russian citizenship because he does not consider himself to be a citizen of Russia, and he regards his Russian passport as a travel document to gain entry to Russia. He explained that he had to renew his Russian passport because the Russian Consulate would not give him a visa to enter Russia on his U.S. passport. He stated that he had no problem renouncing his Russian citizenship, and that he considered the United States his home. He described Russia as his “motherland” and indicated that he would like the United States and Russia to have good relations. Applicant denied any contact with any representatives of the Russian government apart from his visits to the Russian Consulate to renew his Russian passport over the years. If he was to face any threat or blackmail attempt, Applicant indicated that he would inform the appropriate authorities, although he indicated that he had no concerns for the safety of family members, including those in Russia. In response to a question about whether he had provided any assistance to foreign persons or entities, he indicated that he had transferred about \$1,000 to his sister in Russia to cover part of their mother’s funeral costs in September 2002. When asked whether he could conceive of a situation when it would be okay to betray his country (for him the United States since 1991), he responded, “No, other than when it comes to his immediate family.” He professed loyalty solely to the United States, and he demonstrated to the interviewer an understanding of the need to protect U.S. missions and secrets. (GE 2.)

About Russian contacts or relationships, Applicant related during his counterintelligence-screening interview that he had annual contact with three resident citizens of Russia: his sister, a self-employed attorney, who had no experience in Russia’s government or military; his spouse’s brother, who had worked as an electrical technician for a state-owned utility before he retired in 2013; and a school friend, who had taught history at a police academy before his retirement in 2013. Applicant indicated that his father-in-law had worked for a Russian state-owned utility until his death in 2006, and that his mother-in-law had been a physician in Russia before her death in 2010. Applicant responded negatively to whether he, any relatives, or associates had ever been members or supporters of terrorist entities or state intelligence or security agencies, including the Glavnote Razvedyvatelnoye Upravlenie (GRU--a military intelligence agency of the General Staff of Russia’s Armed Forces) and the Komitet Gosudarstvennoy Bezqpasnosti (KGB). He detailed extensive foreign travel for business and pleasure. For counterintelligence purposes, the screener concluded that Applicant had the potential to present a security risk because of his dual citizenship and his possession of both United States and Russian passports. National intelligence agency checks and national agency checks were incomplete as of the screening. (GE 2.)

Applicant and his spouse have lived in their current home in the United States since June 2000. (GE 1; AE M.) They paid off their mortgage and do not intend to move from their community. (Tr. 41, 87.) Their older son graduated from a prestigious private university in the United States, and he currently works as a computer software engineer in the United States. (GE 2; AE B.) Their younger son is now ten years old. Applicant’s spouse does not currently work outside the home. (Tr. 41, 54.) Applicant has no foreign assets. (Tr. 50.) He has bank, investment, and retirement account assets in the United

States of approximately \$784,000. (GE 2; AE N.) He testified that his loyalty lies with the United States. (Tr. 45.) He renewed his U.S. passport in October 2018 for another ten years. (AE O.)

Applicant's sister is a divorced 52-year-old private attorney in her native Russia. She has two daughters and two grandchildren. Applicant's last in-person contact with his sister was in 2001, when he was in Russia. He has traveled to Russia since then, but not to her area. He communicates with her a few times a year to exchange birthday and holiday greetings. Their last email contact was in 2013. They now communicate via social media by a messaging application approximately two to three times per year to exchange birthday and New Year's greetings. He testified that he loves his sister, despite the infrequency of their contact. (Tr. 90.) Applicant does not know the names of his sister's grandchildren. He believes that one of his nieces works as a fashion designer. His sister knows he works as an interpreter but not the details of his work. She does not know that he has applied for a security clearance. She has never visited him in the United States. (GEs 1-2; Tr. 45-47, 69-70, 72-75.)

Applicant's spouse's brother is a 62-year-old widower with two adult children and several grandchildren. Applicant's brother-in-law worked until his retirement for an electrical power distribution company that was privatized in the 1990s. Applicant has not spoken to his brother-in-law since his spouse inherited approximately \$10,000 from the sale of her mother's apartment on her mother's death in 2010. Applicant's spouse calls her brother on his birthday each August. Applicant considers his contact with his spouse's brother as minimal. His brother-in-law is unaware that he has applied for a security clearance. Applicant might have seen his brother-in-law during his trip to Russia in 2001. He has not had any in-person contact with him since then. (GEs 1-2; Tr. 47, 69, 76-81.)

Applicant has casual contact a few times a year to exchange birthday and holiday greetings by Skype or Viber with a longtime friend in Russia from their school days (grades 1-12 and university) together in Russia. This friend is a retired history professor who previously worked at a Russian government-affiliated police academy. He does not know Applicant has applied for a security clearance. This friend and his wife visited Applicant and his spouse in the United States in July 2011. They stayed in Applicant's home for one week. Applicant has not seen this friend since then. (GEs 1-2; Tr. 47-48, 69, 81-85.) Applicant admitted at his hearing that he knows other people in Russia, such as former classmates, but he has no ongoing communication with them. (Tr. 49.)

Applicant does not believe that his professional judgment can be influenced by the fact that his sister and brother-in-law live in Russia. (Tr. 49.) Applicant does not foresee that his communications with his sister, brother-in-law, and school friend in Russia will increase in the future. (Tr. 50.) On January 4, 2019, Applicant submitted a statement of his intention to continue to have minimal or no contact with foreign contacts outside of his official duties and with his family. He indicated that any future communications "will remain strictly casual and infrequent," while acknowledging that any future communications that went beyond causal and infrequent would be grounds for revocation of national security eligibility. (AE P.) When asked how he would respond to any attempt at foreign influence

or coercion through his family members in Russia, Applicant testified that if he is in a position of trust, his first thought would be to inform the person who entrusted him with the confidential information. (Tr. 90-91.)

Applicant has taken his work seriously over the years, including his public trust work for the U.S. government. (AE A; Tr. 50.) The night following his security clearance hearing, Applicant was scheduled to travel to a country formerly part of the Union of Soviet Socialist Republics for department X of the U.S. government. Department X obtained a visa for him to travel on his U.S. passport after he advised them that he no longer had a valid Russian passport. (Tr. 91-92.) Applicant testified that if granted a DOD security clearance, he would not renew his Russian passport. (Tr. 92-93.)

Character References

Applicant is reported to have provided reliable and unbiased translation services over the years in the exchanges between Russian and American academics and political leaders arranged by a voluntary association of persons interested in improving relations and understanding between the United States and Russia. He became an indispensable member of the team and earned the respect and trust of participants on both sides. (AE A.)

The state university where Applicant earned his MBA degree has relied on his services as a Russian-language translator and interpreter since 1992. A project manager at the university's translation center attests to the professionalism and accuracy of Applicant's work. He indicates that he "cannot give a high enough recommendation that would adequately reflect [Applicant's] work." (AE A.)

A language specialist with department X of the U.S. government indicates that Applicant has worked with Russian-speaking international visitors participating in department X-sponsored programs since 2001. Applicant has proven to be among the most experienced and reliable interpreters for his office, and he has earned appreciation and praise from the office. The language specialist attests that the office plans to continue offering Applicant interpreter assignments in the future. Applicant has been professional, reliable, and trustworthy in fulfilling his assigned tasks. He believes Applicant can be trusted. (AE A.)

An international trade specialist with department Y of the U.S. government worked directly with Applicant from 2009 to 2015. She described Applicant's interpreter skills as "top notch." He consistently delivered high-quality work during rigorous three and four-week programs involving travel across the United States. Applicant was able to handle technical interpretations in many different industries, and he served as a cultural guide. (AE A.)

The manager of operations for a U.S.-based foreign language translation service indicates that the company would not hesitate to use Applicant's interpreter skills in the future. Applicant's mastery of both Russian and English languages and his

professionalism have led the company to use his services at numerous seminars and conferences in the United States and elsewhere for several years. Feedback from clients has been positive for his knowledge and professionalism. (AE A.)

Administrative Notice

Russia is a highly centralized, authoritarian political system dominated by President Vladimir Putin. Its bicameral federal assembly lacks independence from the executive branch. The United States and Russia established diplomatic relations in December 1991 following the dissolution of the Soviet Union. There is currently a low level of trust between the United States and Russia because of Russia's efforts to influence the 2016 U.S. presidential election and undermine U.S. democratic institutions and because of Russia's recent and ongoing aggressive economic espionage targeting U.S. companies and trade secrets. Russian civilian and military intelligence services have been implicated in a campaign of cyber operations directed at the U.S. government and its citizens, which include spear-phishing campaigns targeting government organizations, critical infrastructure, think tanks, universities, political organizations, and corporations; theft of information; and public release of some of this information. Russia has recently assumed a more assertive cyber posture based on its willingness to target critical infrastructure systems and conduct espionage operations. In addition to cyberspace, Russia uses commercial and academic enterprises that interact with the West, recruitment of Russian immigrants with advanced technical skills, and Russian intelligence penetration of public and private enterprises, to obtain sensitive technical information from U.S. industries. (GE 4.)

In October 2015, three employees of a U.S. company were convicted of conspiring to export and of illegally exporting sophisticated technology (controlled microelectronics) to Russia between October 2008 and October 2012. In May 2016, an agent of Russia's foreign intelligence agency (SVR) working under non-official cover as a bank employee in Manhattan was sentenced to 30 months in prison for attempting to collect economic intelligence and recruit New York City residents as intelligence sources for Russia. He conspired with a trade representative of the Russian government in New York from 2010 to 2014 and with an attaché to Russia's Permanent Mission to the United Nations from 2012 to 2013. (GE 4.)

In March 2017, the U.S. Department of Justice obtained indictments of 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. In August 2017, a U.S. citizen pleaded guilty to conspiring to smuggle and illegally export radiation-hardened integrated circuits to Russia and China between June 2015 and March 2016. In September 2017, the U.S. Department of Homeland Security directed federal departments and agencies to remove Kaspersky Lab products and services based on the information security risks posed by the company and its links to Russia. In March 2018, a Florida man pleaded guilty to conspiring with customers in Russia to illegally export night-vision rifle scopes and a thermal multi-purpose monocular to Russia in 2013. In July

2018, a resident citizen of Russia, who owns a privately-held Russian microelectronics import/export company, was indicted in a U.S. federal district court for conspiracy to commit money laundering, conspiracy to smuggle sensitive electronics to Russian military and intelligence agencies, and conspiracy to violate the International Emergency Powers Act. (GE 4.)

In early October 2018, seven officers of the GRU were indicted in a U.S. federal district court for computer hacking, wire fraud, aggravated identity theft, and money laundering. The GRU officers are alleged to have conspired between December 2014 and at least May 2018 in conducting persistent and sophisticated computer intrusions affecting U.S. persons, corporate entities, international organizations, and their respective employees based on their strategic interest to the Russian government. Two of the GRU officials were charged with conspiring to gain unauthorized access to computers of U.S. persons and entities involved in the 2016 U.S. presidential election, steal documents from those computers, and stage releases of the stolen documents to interfere with the election. In mid-October 2018, a Russian national was charged in the United States with conspiring to interfere with the U.S. political system, including the 2018 midterm election. While serving as chief accountant of a Russian umbrella effort funding by a Russian oligarch to spread distrust of U.S. candidates and the U.S. political system and to defraud the United States, she allegedly played a central financial management role in a disinformation campaign through social media platforms to create and amplify divisive social and political content targeting U.S. audiences. In December 2018, the U.S. State Department added 12 individuals and entities to the List of Specified Persons pursuant to Section 231 of the Countering America's Adversaries through Sanctions Act for being part of, or operating for or on behalf of, the defense or intelligence sectors of the Russian government. The U.S. intelligence community believes Russia will remain a major threat to U.S. government, military, diplomatic, commercial, and critical infrastructure. (GE 4.)

The U.S. State Department issued a Level 2 travel advisory for Russia in December 2018, advising U.S. citizens to exercise increased caution due to terrorism, harassment, and the arbitrary enforcement of local laws in Russia. U.S. citizens are advised that terrorist groups, transnational and local terrorist organizations, and individuals inspired by extremist ideology continue plotting possible attacks in Russia and that terrorists may attack with little or no warning places frequented by tourists. Additionally, U.S. citizens visiting or residing in Russia have been arbitrarily interrogated or detained by Russian officials and may become victims of harassment, mistreatment, and extortion. Russia enforces special restrictions on dual U.S.-Russian nationals and may refuse to acknowledge their U.S. citizenship, including denying U.S. consular assistance to detained dual nationals and preventing their departure from Russia. The U.S. government has assessed Moscow as being a high-threat location for terrorism, crime, and political violence directed at or affecting official U.S. government interests. (GE 4.)

Serious human rights abuses persisted in Russia in 2017 as Russia continues to train, equip, lead, and fight alongside pro-Russian forces in regions of eastern Ukraine since the occupation and "annexation" of Crimea in March 2014. The United States

considers Russia's actions in Crimea to be unlawful and in violation of Ukrainian and international law, and has suspended most bilateral engagement with the Russian government on economic issues. Russian authorities conducted politically motivated arrests, detentions, and trials of Ukrainian citizens in Russia. Russian authorities continued to severely restrict the ability of Russia's citizens to choose their government through free and fair elections and to exercise freedoms of expression, assembly, association, and movement. Russian authorities blocked and filtered Internet content and used cyberattacks to disrupt peaceful Internet discussion. Widespread corruption persisted in all branches of government. Extrajudicial killings, enforced disappearances, torture, lack of judicial independence, harsh and life-threatening conditions in prisons, and arbitrary arrest and detention, were among the most significant human rights abuses in Russia in 2017. (GE 4.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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." 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 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 that the 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

The security concern relating to the guideline for foreign influence is articulated 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 that is 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.

Applicant’s only sibling, his brother-in-law, and his longtime friend since childhood are Russian resident citizens. Review of Applicant’s contacts and connections to these foreign citizens is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or create a potential conflict of interest under AG ¶ 7(b). Those disqualifying conditions provide:

(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.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The “heightened risk” denotes a risk greater than the normal risk inherent in having a family

member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant understandably has bonds of affection for his sister, his only sibling, even though his contact with her is only two or three times a year by a social media messaging application. Regarding his brother-in-law, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. See *e.g.*, ISCR Case No. 11-12659 (App. Bd. May 30, 2013). The evidence does not indicate that Applicant has close ties to his spouse's brother. They have not talked since approximately 2010. His spouse contacts her brother at least annually on his birthday, and so the risk of undue influence through his spouse must be considered. Applicant's relationship with his friend from their school days is longstanding and is maintained by contact by Skype or Viber a few times a year. This friend and his wife visited Applicant and his spouse for one week in the United States in approximately 2011. There is nothing untoward about these contacts. A heightened risk exists, however, because Applicant's spouse, brother-in-law, and longtime friend are resident citizens of Russia, a country with a long history of espionage against the United States and, in recent years, also cybercrime targeting U.S. interests to steal sensitive information and technologies and undermine the country's democratic institutions and stability. Given Russia's poor human rights record in several aspects, the possibility of Applicant's family members and friend being coerced, pressured, or even arrested in an attempt to gain information from Applicant cannot be ruled out. Applicant's friend is now retired, but from employment as a professor at a Russian state-run police academy. Applicant's foreign relationships and albeit infrequent contacts create a heightened risk and a possible security concern about his desire to help his relatives and friend living in Russia by providing classified information. Foreign influence disqualifying conditions AG ¶¶ 7(a) and 7(b) are established.

The burden shifts to Applicant to mitigate the risk of undue foreign influence that exists because of his ties to Russia, a country known to target U.S. citizens to obtain classified or sensitive information. AG ¶ 8(a) provides for mitigation as follows:

- (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.

AG ¶ 8(a) does not apply. Russia's long history of aggressive espionage from within and outside the United States targeting classified and sensitive military and technological information, and its recent cyber hacking of emails of U.S. citizens and political entities, increase the risk that Applicant could find himself in a position of having to choose between the interests of his foreign family members and friend and the interests of the United States. His sister's work as a private attorney could raise the attention of Russian authorities, and his friend would be known to his former colleagues at the police academy.

Applicant denies any loyalty to Russia or its institutions, but he retains a significant tie through his Russian citizenship. Although the United States does not prohibit dual citizenship, it does not encourage it because of the conflicting obligations that may ensue to the foreign country. Were he to travel to Russia, Applicant might not be able to count on the protections of his U.S. citizenship because of his dual nationality. Furthermore, it is difficult to conclude that the bonds of affection to his sister are so minimal to satisfy the first part of AG ¶ 8(b), which provides:

(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant's relationships and loyalties in the United States are so deep and longstanding that he can be counted on to resolve any conflict in favor of the U.S. interest. In that regard, he has established strong ties to the United States over the last 25 years. He came to the United States on a short-term visa as a J-1 scholar visa in 1991. He decided to remain in the United States because of better healthcare and education opportunities for his family, and his spouse and son joined him in the United States a year later. He earned an MBA degree from the university and managed a U.S.-government-funded program for the public university for a couple of years. Applicant and his spouse purchased their current home in 2000, and he started a successful career as a freelance Russian-language interpreter. In June 2000, he began providing linguist services for department X of the U.S. government. He was vetted favorably for a public trust position by the department in 2004 and again in 2009, and was scheduled to travel abroad for department X after his May 2019 hearing. Applicant also provided interpreter services for U.S. department Y for about a decade starting in January 2005. Among his other clients, including state governments and federal and state courts, Applicant provided interpreter services for a national laboratory involved in nuclear security issues from July 2007 to at least December 2017. He traveled to Russia for the laboratory in October 2009 and January 2010, but has not been to Russia since then. Most of his work involving Russia has been in the United States. All of Applicant's financial assets are in the United States, and they are more than sufficient to meet his family's financial obligations.

Under the sponsorship of his then employer, Applicant obtained his "green card" in 2001. Under his own application, he acquired U.S. citizenship through naturalization in

2009. His spouse and the elder of his sons became naturalized citizens in 2007, and his younger son was born in the United States in October 2008. Applicant obtained his first U.S. passport in May 2009. He used his U.S. passport for all his foreign travel, but to enter Russia in January 2010 and also likely in October 2009. He renewed his U.S. passport in October 2018.

Applicant testified that he assumed that his Russian citizenship was renounced when he took the oath of naturalization in the United States in April 2009, although he was alerted that he retained his Russian citizenship when he tried unsuccessfully to obtain a visa to travel to Russia on his U.S. passport. He traveled to Russia in October 2009 and January 2010. During counterintelligence screening in March 2018, he indicated that he used his U.S. passport in October 2009 and his Russian passport in January 2010. His U.S. passport does not show any entry stamp for Russia in October 2009, although it bears a re-entry stamp for the United States. By January 2010 if not by October 2009, Applicant knew that he retained Russian citizenship. He did not use his Russian passport that was valid for five years on renewal in May 2013, and he did not renew it when it expired in May 2018. His retention of his Russian citizenship is not inconsistent with his U.S. citizenship because U.S. law and the Directive do not prohibit dual citizenship. Even so, he has expressed a credible willingness to renounce his Russian citizenship if required, since his loyalty and life are with the United States, where he has spent the past 28 years. His ties to the United States significantly outweigh those to his native Russia. AG ¶ 8(b) applies in this case.

AG ¶ 8(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,” warrants some consideration because of the limited communication between Applicant and his sibling and friend and between Applicant’s spouse and her brother. Yet, the closeness of the sibling bond and of friendship lasting some 50 years preclude a finding that the contacts are casual. AG ¶ 8(c) 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d). Those factors are as follows:

- (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.

Russian authorities could conceivably bring some pressure on Applicant's sibling, his spouse's sibling, or his friend to gain influence or information from him. People act in unpredictable ways when faced with choices that could be important to a family member. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." Moreover, in evaluating Guideline B concerns, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant cannot control the actions of the Russian government, intelligence, or security services, but he can control his response if placed in the untenable position of having to choose between the interests of the United States and the interests of his family members or friend. He indicated that if undue pressure were to be placed on him, he would contact the authority that entrusted him with the confidential or sensitive information. Although not controlling, it is relevant that Applicant has twice been vetted by another department of the U.S. government and determined eligible for a public trust position. He has worked for the U.S. government, primarily in the United States but also abroad, for the past 19 years, and demonstrated professionalism, reliability, and trustworthiness. There is no indication whatsoever that he has betray the confidence placed in him. After considering all the facts and circumstances, I find that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

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-1.c:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge