



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



In the matter of:)
)
) ISCR Case No. 18-02802
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: William Henderson, Personal Representative

07/24/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s connection to a friend who is a citizen and resident of Israel is mitigated. However, her father and sister were in Russia at the time of her hearing, and she is close to both of them. Foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On December 2, 2017, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On March 12, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a

security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline B (foreign influence).

On March 20, 2019, Applicant responded to the SOR. (HE 3) She requested a hearing. (Tr. 9-10; HE 4-5) On May 20, 2019, Department Counsel was ready to proceed. On June 21, 2019, the case was assigned to me. On June 28, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 9, 2019. (HE 1) Applicant waived her right to 15 days of notice of the date, time, and location of her hearing. (Tr. 12-13) Applicant's hearing was held as scheduled on July 9, 2019.

During the hearing, Department Counsel offered two exhibits; Applicant offered seven exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 18-19; Government Exhibit (GE) 1-2; Applicant Exhibit (AE) A-G). On July 18, 2019, DOHA received a transcript of the hearing.

Procedural Rulings

Applicant changed employment before her hearing, and there was a question about sponsorship for a security clearance. (Tr. 13-14) Her new employer sponsored her for a security clearance. (Tr. 13-14; HE 9)

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Russia and Israel. (Tr. 15-16; HE 6-7) Citing the DOD Personnel Security and Research Center (PERSEREC), *The Expanding Spectrum of Espionage by Americans, 1947-2015* (Technical Report 17-10, August 2017) (PERSEREC Report), Applicant requested administrative notice setting forth comparative data, showing the historical changes in the sources of and the motivation for espionage committed by U.S. citizens. (Tr. 16; HE 8) Applicant said, "The data clearly show the steady decline of Russia as a recipient of information, both in total numbers and in percentage over time. The data show that coercion, as a motivation for espionage, has also declined significantly." (Tr. 16) The PERSEREC Report states the number of people indicating the primary or sole reason for espionage was coercion declined from five (1947-1979) to zero (1980-2015). (HE 8 at 4) The most common primary or sole reason for espionage was money at 28% during the most recent period studied (1990-2015), and the second most common primary or sole reason for espionage was divided loyalties at 22% during the same period (1990-2015). (HE 8 at 5)

The PERSEREC Report states:

As discussed earlier, both the number of naturalized citizens and the number of divided loyalties as a motive almost doubled in the most recent cohort. Naturalized citizens, by definition, would have ties to their country of origin, so it is not surprising that most of them have foreign relatives,

foreign connections, and/or foreign cultural ties. [There are also] . . . notable percentages of native born American citizens with these ties. These data suggest that while there has been an increase in the number of naturalized citizens in the recent cohort of spies, the increase in divided loyalties should not be attributed only to them.

(PERSEREC Report at 54-55) During the most recent period studied (1990-2015) of the group committing espionage-type offenses, “Sixty percent were volunteers and 40% were recruited. Among recruits, 60% were recruited by a foreign intelligence service and 40% by family or friends. Contacting a foreign embassy was the most common way to begin as a volunteer.” *Id.* at v. The PERSEREC Report only considered 209 individuals, and conceded they “constitute a very small number on which to apply statistical analysis,” and the information is limited to open sources. *Id.* at 6.

Applicant objected to the relevance of the information in the Government’s requests for administrative notice because coercion is rarely used to obtain classified information. (Tr. 29-23; HE 8) I overruled that objection because the Government’s administrative notice request does not indicate whether anyone was coerced into compromising classified information because of family living in Russia. Notwithstanding the lack of evidence of coercion based on relatives living in a foreign country, coercion cannot be categorically ruled out, especially in instances where countries do not comply with the rule of law. Moreover, the trend against use of coercion could change in the future should an adversary of the United States deem it advantageous to apply coercion or other inducements to obtain classified information. Finally, it is possible that the PERSEREC Report is incomplete as it does not include classified information, and it may not include full information about motivations for espionage. Finally, individuals arrested for espionage might not be candid about their motivations to commit espionage. Thus, the PERSEREC Report has limited value in its applications to allegations of foreign influence from Russia. In sum, Applicant’s objections go to the weight and not the admissibility of the Government’s administrative notice request.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); 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)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant’s and Department Counsel’s administrative notice requests are granted. Portions of the Department Counsel’s requests are quoted without quotation marks and footnotes.

The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and her family’s privacy. The cited sources contain more specific information.

Findings of Fact

The SOR alleges: Applicant's mother, father, and sister are citizens of Russia; her sister is a resident of Russia and an employee of the Russian Government; and she maintains contact with a friend who is a citizen and resident of Israel. (HE 2) Applicant admitted all of the SOR allegations. (HE 3) She also provided mitigating information. (HE 3) Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 31-year-old logistics and procurement specialist. (Tr. 48-49) Her employment for the previous five years was as a buyer for a different company. (Tr. 48-49) She was born and raised in Uzbekistan. (GE 1) She lived there for 17 years before she moved to Russia in 2005. She obtained Russian citizenship to qualify for social benefits, such as medical services in Russia. (Tr. 53) From 2005 to 2010, she lived in Russia, and in 2010, she immigrated to the United States. In 2015, she became a U.S. citizen. (Tr. 49, 79) She has lived at the same address in the United States for nine years. (Tr. 48) She was an intern in the United States for eight months before immigrating to the United States in 2010. (Tr. 49) Applicant said she is willing to renounce her Russian citizenship; however, she has not taken any steps to do so. (Tr. 53, 77) Applicant attended university in Russia; however, she does not owe any student loan debts to the Russian Government. (Tr. 54) She is currently enrolled in a U.S. university. (Tr. 56)

Applicant's parents lived in Russia for many years before visiting the United States for six months in 2017. (Tr. 59) Applicant's father was a mechanic in Russia before he retired. (Tr. 61) Applicant sponsored her parents for permanent residence in the United States, and in 2018, they returned to the United States and received their green cards. (Tr. 59-80) Her parents lived with Applicant and her husband when they were in the United States. Applicant speaks excellent English; however, her parents speak little English. (Tr. 31-32) Her father returned to Russia in 2019 for medical treatment because it was less expensive than in the United States. (Tr. 60) Applicant paid her father's expenses to return to Russia. (Tr. 76) Her father receives a \$125 monthly pension from the Russian Government, and these payments will end when he becomes a U.S. citizen. (Tr. 77, 79) She believes he will return to the United States in August 2019. (Tr. 60-61) Her parents know she has applied for a security clearance. (Tr. 72)

Applicant has two siblings. (Tr. 50) One of her sisters emigrated from Uzbekistan to Russia, and this sister is a citizen of Russia and has lived in Russia for 32 years. (Tr. 50) She is employed by the Russian government in a low-level position. (Tr. 50) She is married and her husband works in retail. (Tr. 51) She has three children. (Tr. 51) Applicant and her sister communicate with each other on a weekly to monthly basis. (Tr. 51-52, 74; GE 1) Applicant's mother communicates with Applicant's sister on about a weekly basis. (Tr. 75) Applicant's sister has not visited Applicant in the United States. (Tr. 52)

Applicant's other sister lives in the United States, and she has been a permanent resident of the United States since 2004. (Tr. 62) She is a Russian citizen, and she intends to become a U.S. citizen. (Tr. 58) She is divorced, and she has one child. (Tr. 63)

Applicant traveled to Russia in 2012 and 2016, and she traveled to Israel in 2012 and 2017. (Tr. 64-65) In 2012, Applicant voted in a Russian election. (Tr. 69) She voted in U.S. elections in 2016 and 2018. (Tr. 69) Applicant has a friend who lives in Israel, and Applicant communicates with her about once a month and on holidays. (Tr. 62-63)

Applicant lives with her husband, her two children, and her mother. (Tr. 41) Her husband was born in the United States in 1967. (Tr. 57) He has a Ph.D. in engineering. (Tr. 57) Applicant participates in the Parent Teacher Association, enjoys being a spectator at her children's sporting events, and raises donations for Children's Hospital. (Tr. 72) She received a certificate of appreciation from Children's Hospital in 2019. (AE F) Applicant does not have any assets in Russia, and her and her husband's net worth in the United States is about \$800,000. (Tr. 73) In 2019, she received a certificate of completion for annual insider threat refresher training. (AE G)

Character Evidence

A friend and neighbor, and a friend and coworker described Applicant as professional, honest, trustworthy, and patriotic. (Tr. 27-46) She is a wonderful mother and a loving wife. They support her access to classified information.

A company vice president and a supervisor described Applicant as an exceptional employee who is diligent, honest, dependable, professional, and who "performed brilliantly." (AE A; AE B) She received excellent employee evaluations. (AE C-AE E)

Russia

The USSR was the principal adversary of the United States during the Cold War (1947-1991), after which it broke into Russia and 14 independent republics. Following economic and political turmoil during President Boris Yeltsin's term (1991-1999), Russia shifted toward a centralized authoritarian state under the leadership of President Vladimir Putin, in which the regime seeks to legitimize its rule through managed elections, populist appeals, a foreign policy focused on enhancing the country's geopolitical influence, and commodity based economic growth. Russia faces a largely subdued rebel movement in Chechnya and other surrounding regions, although violence still occurs through the North Caucasus.

On July 26, 2018, the National Counterintelligence and Security Center released its 2018 Foreign Economic Espionage in Cyberspace Report, in which it reported that foreign economic and industrial espionage against the United States continues to represent a significant threat to the United States' prosperity, security, and competitive advantage and 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. It reported that Russia uses cyber operations as an instrument of intelligence collection to inform its decision-making and benefit its economic interests, and that Russian intelligence services have conducted sophisticated and large-scale hacking operations to collect sensitive U.S. business and technology information.

The report noted that, “[a]n aggressive and capable collector of sensitive U.S. technologies, Russia uses cyberspace as one of many methods for obtaining the necessary know-how and technology to grow and modernize its economy.” Other methods of collection include use of Russian commercial and academic enterprises that interact 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.

On February 13, 2018, the Office of the Director of National Intelligence (ODNI) issued its Worldwide Threat Assessment of the U.S. Intelligence Community, Statement for the Record, in which it 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; and that Russia will 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. The ODNI also assessed that President Putin will likely increase his use of repression and intimidation to contend with domestic discontent over corruption, poor social services, and a sluggish economy; he will continue to manipulate the media and is likely to expand the Russian government’s legal basis for repression; and during 2018, Russia will 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-a-vis the United States. Russia will also seek to maintain, and where possible, expand its influence through the former Soviet countries that it asserts are in its self-described sphere of influence.

The ODNI has reported that areas of highest interest to foreign intelligence collectors include energy/alternative energy; biotechnology; defense technology; environmental protection; high-end manufacturing; and information and communications technology. In March 2017, the U.S. Department of Justice indicted 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. The charges included conspiring to engage in economic espionage and theft of trade secrets.

The ODNI has also 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 and 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 Russia’s recognition of the worldwide effects that mass disclosure of U.S. Government and other private data have achieved in recent years. The ODNI assessed that Russian

intelligence services will continue to develop capabilities to provide President Putin with options to use against the United States.

The U.S. Department of State Travel Advisory for Russia is Level 2 - Exercise Increased Caution, due to terrorism, harassment, and the arbitrary enforcement of local laws. The advisory directs U.S. citizens not to travel to the North Caucasus, including Chechnya and Mount Elbrus, due to terrorism and civil unrest; or to Crimea due to Russia's occupation of the Ukrainian territory and abuses by its occupying authorities. Terrorist groups continue plotting possible attacks in Russia, and may attack with little or no warning. U.S. citizens have been arbitrarily interrogated or detained by Russian officials and may become victims of harassment, mistreatment, and extortion. Due to the Russian government-imposed reduction on U.S. diplomatic personnel in Russia, the U.S. Government has reduced ability to provide services to U.S. citizens.

The Department of State has assessed Moscow as being a high-threat location for terrorist activity directed at or affecting official U.S. Government interests. Although Russia continued to prioritize counterterrorism efforts in 2017, it remained a target of international terrorist groups, particularly ISIS.

Russia maintains an extensive military presence in Crimea and is likely to take further military actions in Crimea as part of its occupation of this part of Ukraine. The international community, including the United States and Ukraine, does not recognize Russia's purported annexation of Crimea. In response to Russia's violations of Ukraine's sovereignty, and other acts, the United States suspended most bilateral engagement with the Russian government on economic issues. Anti-American and anti-Western rhetoric is widespread in both official media sources and on social media.

In its 2017 Human Rights Report, the Department of State reported that Russia's occupation and purported annexation of Ukraine's Crimean Peninsula continued to affect the human rights situation in Russia significantly and negatively. Credible observers attributed thousands of civilian deaths and injuries, as well as widespread abuses, to Russian-led forces in Ukraine's Donbas region and to Russian occupation authorities in Crimea. Human rights groups asserted that numerous Ukrainian citizens remained in Russia as political prisoners.

The most significant human rights issues in Russia included extrajudicial killings; enforced disappearance; torture that was systematic and sometimes resulted in death and sometimes 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 government failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity.

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

Department Counsel provided examples of Russian intelligence operations within the United States including information about indictments and convictions. There is no evidence that Applicant or her family are or were involved in any intelligence operations against the United States or otherwise.

Israel

Israel is a multiparty parliamentary democracy. Israel is a close ally of the United States. The two countries participate in joint military planning and training and have collaborated on military research and weapons development. There have been incidents of illegal export, actual or attempted, of dual-use technology from the U.S. to Israel. The United States has disagreed with Israel about its sale of United States and Israeli technologies to other countries, such as China and Russia. Israel has been subjected to numerous attacks from the Palestinians from the Gaza Strip. There is a significant risk of terrorism in Israel.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 has 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;

(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 mother, father, and sister are citizens of Russia; her sister is a resident of Russia and an employee of the Russian Government; and she maintains contact with a friend who is a citizen and resident of Israel. Applicant and her mother have frequent contact with her sister who lives in Russia. Frequent contacts are manifestations of an applicant's care and concern for relatives and friends.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

The mere possession of close family ties with relatives or friends living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone living in the same residence have such a relationship with even one person living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). Applicant has not denied that she has affection for her immediate family members.

The DOHA Appeal Board has indicated for Guideline B cases, “the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the likelihood that an applicant’s family members living in that country 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, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Russia with the United States, and the situation in Russia place a burden of persuasion on Applicant to demonstrate that her relationships with any family member living in or visiting Russia does not pose a security risk. Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Russia.

Applicant’s relationship with a friend living in Israel is less significant than her relationship with her sister living in Russia because Israel is a democracy, generally follows the rule of law, and is a close ally of the United States.

The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant’s immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant’s ties and contacts with immediate family members in a foreign country raise security concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant’s immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person’s immediate family members -- regardless of whether the person’s family members are prominent or not.

Guideline B security concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to

have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Russia seek or have sought classified or economic information from or through Applicant or her family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Russia has a significant problem with terrorism and crime. Applicant’s family in Russia “could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant’s relationships with relatives who are living in Russia or visiting that country create a potential conflict of interest because Russian intelligence operatives could place pressure on or offer inducements to her family in Russia in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s relationships with family in Russia and her friend in Israel in regard to the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six 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 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶ 8(b) partially applies. Applicant has frequent contact with or a close relationship with her sister, who is a citizen and resident of Russia. She also has a close relationship with her father who is visiting Russia for medical treatments. Her relationship with her friend in Israel is less significant because she is not a family member and Israel is a close ally of the United States. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant resided in the United States from 2010 to present, except for relatively brief trips outside the United States. Applicant, her husband, and two children are U.S. citizens. She has one sibling and one nephew who live in the United States. She and her husband have assets in the United States of about \$800,000 and no assets in Russia. Applicant's mother and father are permanent residents of the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with relatives who are citizens and residents of Russia or visiting Russia. Applicant has close relationships with family

in that country, and they are at risk from intelligence operatives, criminals, terrorists, and human rights violations of Russia's government.

In sum, Applicant's connections to her friend in Israel are relatively insignificant, as Israel is a democracy, complies with the rule of law, and is a close ally of the United States. Applicant's connections to relatives living in Russia are too significant to mitigate in the circumstances Applicant presented. Her connections to the United States taken together are not sufficient to overcome the foreign influence security concerns under Guideline B relating to her connections to Russia.

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(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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 31-year-old logistics and procurement specialist. She was born and raised to the age of 17 years in Uzbekistan. In 2005, she moved to Russia. She obtained Russian citizenship to qualify for social benefits, such as medical services in Russia. From 2005 to 2010, she lived in Russia, and in 2010, she immigrated to the United States. In 2015, she became a U.S. citizen. Applicant said she is willing to renounce her Russian citizenship; however, she has not taken any steps to do so. She is currently enrolled in a U.S. university.

A friend and neighbor, a friend and coworker, a company vice president, and a supervisor provided character evidence on Applicant's behalf. The general sense of their evidence is that Applicant is an exceptional employee, professional, honest, diligent, trustworthy, and patriotic. She is a wonderful mother and a loving wife. They support her access to classified information. She received excellent employee evaluations.

Applicant's spouse and two children are U.S. citizens, and they reside in the United States. Applicant's parents and sister are permanent residents of the United States. She has a nephew who lives in the United States. Applicant and her spouse have substantial assets in the United States and no assets in Russia.

Applicant has frequent contact with or cares for her family, who are citizens and residents of or visiting Russia. Her frequent contacts with her family in Russia are a manifestation her care and concern for them. Her relationships with residents of Russia are positive character traits; however, they raise important foreign influence security concerns. Connections to foreign countries must be balanced against connections to the United States.

Applicant has resided in the United States from 2010 to present, except for some brief trips outside the United States, including trips to Russia in 2012 and 2016. Her father returned to Russia for medical treatments. Her sister is a citizen and resident of Russia, and she is a low-level Russian Government employee. She has a close relationship with her father and sister, and she frequently communicates with them.

A Guideline B decision concerning Russia must take into consideration the geopolitical situation and dangers there. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion). Russia has a history of espionage against the United States and violence from terrorists, and the Russian government does not respect the full spectrum of human rights.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

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 and 1.b:	Against Applicant
Subparagraph 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge