



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| [Redacted]                       | ) | ISCR Case No. 18-03004 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

06/20/2019

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence), raised by Applicant’s family ties to Russia. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on January 6, 2017. On January 9, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on February 1, 2019, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s

written case on March 11, 2019. On April 5, 2019, a complete copy of the file of relevant material (FORM), consisting of Items 1 through 5, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on April 10, 2019, and did not respond. The case was assigned to me on June 5, 2019.

FORM Item 4 is a summary of an interview with Applicant conducted by a security investigator on March 30, 2017. The summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the summary; make any corrections, additions, deletions or updates; or object to consideration of the summary on the ground that it was not authenticated. I conclude that she waived any objections to the interview summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted all the allegations. Her admissions are incorporated in my findings of fact.

Applicant is a 41-year-old research programmer employed by a defense contractor since November 2016. She was employed in the private sector from August 2002 to October 2011. She was laid off and unemployed from November 2011 to October 2016. She has never held a security clearance.

Applicant was born in Russia. She came to the United States in November 1998. She attended a U.S. university from September 2000 to May 2002 and received a bachelor's degree. She married a native of Russia in June 2005. She became a U.S. citizen in April 2006. Her husband is a dual U.S.-Russian citizen, employed as an information technology manager in the U.S. entertainment industry. (FORM Item 4 at 5.) She and her husband have two children, who were born in the United States in March 2008 and February 2014 and are dual U.S.-Russian citizens.

Applicant's parents and sister are citizens and residents of Russia. Applicant maintains dual U.S.-Russian citizenship so that she can visit her parents and sister in Russia without obtaining a visa. (FORM Item 4 at 1.) Applicant visited her family in Russian for 6-10 days in 2008; 21-30 days in 2009, 2010, and 2011; and more than 30 days in 2012, 2014, and 2015. (FORM Item 4 at 31-39.)

Applicant's parents are both employed by a Russian building-material company. Her mother is a manager for the company and her father is a director. Her sister is a Russian lawyer. Applicant has daily electronic contact with her mother, weekly electronic contact with her father, and weekly electronic contact with her sister. (FORM Item 4 at 5-6.)

Applicant's mother-in-law and father-in-law are dual U.S.-Russian citizens and live in the United States. Her father-in-law previously worked as a scientist for a Russian clean-water company. Her mother-in-law has not previously worked outside the home, except for work as a German translator. (FORM Item 4 at 6.) There is no evidence that Applicant's husband has any immediate family members or other persons with whom he has ties of obligation or affection in Russia.

As requested by Department Counsel, I have taken administrative notice that Russia is one of the top three most aggressive collectors of economic information and technological intelligence from U.S. sources. Russia uses cyber operations as an instrument of intelligence collection, using sophisticated and large-scale hacking to collect sensitive information, influence the political process in the United States, and undermine Euro-Atlantic unity. Russia also uses commercial and academic enterprises that interact with the West, recruitment of Russian immigrants with advanced technical skills, and penetration of public and private enterprises by Russian intelligence agents to obtain sensitive technical information. The areas of highest interest include alternative energy, biotechnology, defense technology, environmental protection, high-end manufacturing, and information and communications technology. Russian agents have been involved in intrusions affecting U.S. citizens, corporate entities, international organizations, and political organizations in the United States. Significant human-rights issues in Russia include extrajudicial killings; enforced disappearance; torture, including punitive psychiatric incarceration; harsh prison conditions; arbitrary arrest and detention; and lack of judicial independence. The Department of State has identified Moscow as a high-threat location for terrorist activity directed at official U.S. Government interests.

### **Policies**

"[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

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

The SOR alleges that Applicant’s father, mother, and sister are citizens and residents of Russia (SOR ¶¶ 1.a-1.c). The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual maybe 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.

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions:

AG ¶ 7(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

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicants with foreign family ties to a country that is hostile to the United States have a heavy burden of persuasion to show that neither they nor their family members are subject to influence by that country. ISCR Case No. 11-01888 (App. Bd. Jun. 1, 2012), citing ISCR Case No. 07-00029 (App. Bd. Dec. 7, 2007).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. Russia's aggressive intelligence efforts targeting U.S. industry, technology, and political processes; its poor human rights record; and terrorist activity within Russia aimed at U.S. interests are sufficient to establish a heightened risk under AG ¶ 7(a) and create the potential conflict of interest contemplated in AG ¶ 7(b).

The following mitigating conditions are potentially applicable:

AG ¶ 8(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(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;

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;

None of the above mitigating conditions are established. Applicant has lived in the United States for half of her adult life. She, her husband, and her children are citizens and residents of the United States. Her professional life and her husband's professional life are in the United States. On the other hand, she has deep and longstanding ties to Russia. All her immediate family members are citizens and residents of Russia, and she maintains frequent contact with them. She has retained her Russian citizenship to facilitate her frequent contact with family members. She has not rebutted the presumption that contacts with an immediate family member in a foreign country are not casual. See ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002).

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should apply the nine adjudicative factors in 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.

I have incorporated my comments under Guideline B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her family ties to Russia.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):                   AGAINST APPLICANT

Subparagraphs 1.a-1.c:   Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge