



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



In the matter of: )  
)  
) ISCR Case No. 19-01094  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

10/23/2019  
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**Decision**  
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Curry, Marc, Administrative Judge:

Applicant’s father, a Ukrainian citizen living in the United States, does not generate a foreign influence security concern. Conversely, Applicant’s mother, a Russian citizen living in the United States, his sister, a Russian citizen and resident, and his Russian bank account generate security concerns that he failed to mitigate. Clearance is denied.

**Statement of the Case**

On May 3, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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*, effective June 8, 2017. The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue Applicant’s security clearance. It recommended

that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On June 10, 2019, Applicant responded to the SOR, admitting all of the allegations, and requesting a decision on the record, rather than a hearing. Department Counsel submitted an undated File of Relevant Material (FORM). Applicant received the FORM on July 31, 2019, and was informed of his opportunity to respond within 30 days of receipt. Applicant did not file a response. On September 26, 2019, I was assigned the case.

In addition to nine exhibits (Items I - IX), the FORM includes a request for administrative notice of facts encapsulated within 28 documents concerning Russia (Request for Administrative Notice: The Russian Federation, Items I-XXVIII), and two documents about Ukraine (Request for Administrative Notice: Ukraine, Items I – II). I have taken administrative notice of these facts and considered them in my analysis of the guideline.

### **Findings of Fact**

Applicant is a 35-year old single man. He was born and raised in what was then the Soviet Union, and immigrated with his family to the United States in 2000. In August 2009, he earned an associate's degree in the field of business administration. He became a naturalized U.S. citizen in April 2016. Applicant is a veteran of the Army National Guard, serving from 2015 to 2018. He was honorably discharged. (Item 6 at 3) He has been working for a trucking company since June 2018. (Item 6 at 2) He has been offered a job as a linguist, pending the outcome of the security clearance process. (Item 4 at 17)

Applicant's mother is a citizen of Russia who lives in the United States. She owns and operates a daycare center. Applicant's father is a citizen of Ukraine. He helps Applicant's mother run the daycare center. Both parents have permanent U.S. resident status. (Item 7 at 13) Applicant lives with his parents and communicates with them daily.

Applicant has two sisters. His older sister was born in what was then the Soviet Union and immigrated with the family to the United States in 2000. After graduating from high school, she returned to Russia in 2004. She is a teacher. Applicant communicates with her approximately once per year via Skype. (Item 7 at 15) Applicant's last contact with his sister occurred in 2017 during a visit to Russia. (Item 4 at 42)

Applicant's younger sister was born after his family immigrated to the United States. She is a U.S. citizen who is attending secondary school. (Item 7 at 16)

During Applicant's last visit to Russia in 2017, he opened a bank account. Currently, the balance is approximately \$20,000. The money in the account belongs to his mother. She uses it to manage two rental properties that she owns in Russia. Applicant's sister and her family live in one of the rental properties. (Item 6 at 5)

Applicant's mother did not open the bank account herself because doing so would have required that she travel to Russia, and she was afraid that if she went, she would not be able to return to the United States. (Item 7 at 9) Applicant is the only member of his family who is authorized to withdraw money from the account. (Item 6 at 5)

### **Administrative Notice**

Russia uses cyber operations as an instrument of intelligence collection to inform its decisionmaking and benefit its economic interest. (Item II at 4) Since at least 2007, Russia's state-sponsored cyber program has routinely collected intelligence on defense and geopolitical issues, including those relating to the United States. (Item II at 4) Russia's efforts to influence the 2016 U.S. presidential election represent the most recent expression of its longstanding desire to undermine the U.S.-led liberal democratic order. (Item V at 1) These efforts marked a significant escalation of past attempts to influence U.S. elections. On December 19, 2018, the U.S. Departments of State and the Treasury announced sanctions against Russia for its "continued and blatant disregard for international norms." (Item XV at 1)

Ukraine is a republic with a semi-presidential political system composed of three branches of government. (Item I at 1). Civilian authorities generally maintained effective control over security forces in territory controlled by the government. However, in territories controlled by Russia, there is widespread corruption, and there have been unlawful killings and politically motivated disappearances. (Item I at 1)

### **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 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, *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.

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. “[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**

Under this guideline, “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.” (AG ¶ 6) Russia is an adversary that has historically sought to undermine Western, liberal values and is seeking to expand its influence worldwide through any means necessary, including espionage, cyberattacks, and interference in foreign elections. Under these circumstances, Applicant’s relationship with his mother, a Russian citizen, and his sister, a Russian citizen and resident, trigger the application of 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.”

Applicant’s bank account in Russia raises the issue of whether AG ¶ 7(f), “substantial business, financial, or property interests in a foreign country, or in any foreign-owned business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest,” applies. Applicant contends this bank account generates no security risk because the money belongs to his mother. Given the circumstances that he set up the account and the significant account balance, I conclude AG ¶ 7(f) applies.

Although Ukraine has issues with human rights and corruption, there is no record evidence that it is seeking to expand its influence worldwide in contravention of U.S. interests or objectives. Under these circumstances, Applicant’s father, a Ukrainian citizen living in the United States, does not generate a security concern.

Applicant immigrated to the United States in 2000 when he was a teenager, and he has spent all of his adult life here. He is a veteran of the National Guard, serving honorably for three years. Given the history, scope, and breadth of Russia’s espionage, which has worsened over the past five years, Applicant’s connection to the United States is simply not sufficient to overcome the very heavy burden generated by his mother, a Russian citizen, his sister, a Russian citizen and resident, and his Russian bank account. I conclude that none of the mitigating conditions apply, and that Applicant has failed to mitigate the security concern.

## **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.

In reaching this decision, I was particularly cognizant of the circumstances surrounding Applicant's ownership of a Russian bank account.

## **Formal Finding**

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 1.d:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc Curry  
Administrative Judge