



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



In the matter of:)
)
) ISCR Case No. 19-00831
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel

For Applicant: Leon Schacter, Esq.

04/29/2020

Decision

Curry, Marc, Administrative Judge:

Based upon the depth of Applicant’s emotional, professional, financial, and social contacts in the United States, I am persuaded that he would resolve any conflict generated by his family members, who are citizens and residents of Russia, in the U.S. interest. Clearance is granted.

History of the Case

On September 17, 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 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 October 8, 2019, Applicant answered the SOR, admitting subparagraphs 1.b through 1.e, and denying subparagraph 1.a, and subparagraph 1.f through 1.h. He requested a hearing, whereupon the case was assigned to me on January 17, 2020. On February 6, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the case for February 20, 2020. Applicant waived his right to 15-days notice of hearing. The hearing was held as scheduled. At the Government's request, I took administrative notice of the facts set forth in an exhibit submitted by Government, and marked it as Hearing Exhibit (HE) I, Attachment (Att.) 1 through Att. 21. Applicant and three character witnesses testified. The transcript was received on February 28, 2020.

Findings of Fact

Applicant is a 43-year old married man with two children, ages 14 and 9. He was born and raised in what was then the Soviet Union, earning an undergraduate and master's degree in engineering from Russian universities. (Tr. 35) He immigrated to the United States in 2000 and became a naturalized U.S. citizen in 2006. (Tr. 27) Applicant has been working as an engineer for a defense contractor since 2013. (Tr. 35) He is currently working towards another master's degree. (Answer at 2)

Applicant met his wife in 1993 during his freshman year in college, and began dating shortly thereafter. (AE L) In 1995, his wife immigrated to the United States to live with her father, who had earlier immigrated to the United States in 1989. By the time Applicant's wife had moved to the United States, she and Applicant had planned on getting married and for Applicant to relocate here as soon as he finished his studies. (AE L at 2)

In June 2000, Applicant's wife graduated from a U.S. college. In July 2000, she became a naturalized U.S. citizen. In August 2000 Applicant and his wife married, and in November 2000, Applicant relocated to the United States. (AE L at 3)

Applicant's children were both born in the United States. (AE L at 5) Applicant's daughter, the older of his two children, has dual Russian and U.S. citizenship. Applicant obtained dual citizenship status for her during a trip to visit his parents when she was a toddler. (Tr. 33) Both Applicant and his wife were dual Russian citizens at the time. When they applied for a travel visa for their daughter, the Russian government informed them that she needed to travel with a Russian passport. (Tr. 32; Answer at 5) Applicant's daughter has no cultural affinity with Russia.

Applicant's father died in 2019. His mother is a citizen and resident of Russia. She is a retired electrical engineer. (Tr. 45) She has never worked for, or otherwise been involved, with the Russian government. (Tr. 45) The United States granted

Applicant's mother permanent resident alien status in 2010. (Tr. 70) From 2010 to 2015, Applicant's parents would typically spend the summers and the winter holidays living with Applicant and his family. (Tr. 42, 64) Applicant's parents stopped traveling to the United States in 2015 after their health worsened. (Tr. 79)

Currently, Applicant talks with his mother approximately once per week. (Tr. 70) He communicates with her more frequently since his father died, and as her health has worsened. Applicant provides no financial assistance to his mother. She receives a pension of \$1,000 per month. (Tr. 68)

Although Applicant and his half-brother do not share the same father, they were raised in the same home. (Tr. 71) Applicant's half-brother is a citizen and resident of Russia. Applicant did not know his half-brother that well growing up because he left home at 18 when Applicant was 12 years old.

Applicant's half-brother is the owner of a large company that provides private security services to malls, department stores, and office buildings. (Tr. 50) He has no security contracts with the Russian government or any of its municipalities. (Tr. 79)

In the late 2000's, Applicant's half-brother considered relocating to the United States. He purchased a house in a community close to where Applicant lived. (Tr. 72-73) In 2008, the United States issued Applicant's half-brother an investment visa. This enabled him to go into business with Applicant. (Tr. 73) Together they purchased two gas stations between 2009 and 2011. (Tr. 78) When they initiated this venture, Applicant's entire family in Russia wanted to immigrate to the United States. (Tr. 75) The goal was to cultivate a successful business that could provide gainful income to both Appellant and everyone who relocated.

Ultimately, Applicant's half-brother chose not to immigrate here because of a lengthy delay in the green card approval process for potential immigrants who were not immediate family members of the sponsoring U.S. citizen. (Tr. 78) In addition, Applicant's parents decided that they did not want to relocate here full time. (Tr. 75)

Applicant was unable to manage the gas stations by himself. Consequently, he and his half-brother closed them in 2012. During the time Applicant and his half-brother owned the gas stations, his half-brother wired him hundreds of thousands of dollars to invest in their business.

Applicant's contact with his half-brother has been "slowly deteriorating as time goes by." (Tr. 58) His half-brother last visited him in 2017, and Applicant last saw him in 2019 when he returned to Russia to attend his father's funeral. (Tr. 79) Applicant communicates with his half-brother primarily through text messages on birthdays and holidays, discussing innocuous subjects such as their family and kids, and their travel experiences. (Answer at 7; Tr. 58) They actually speak on the phone two or three times per year. (Tr. 50)

Applicant's sister-in-law, married to his half-brother, is a citizen and resident of Russia. Currently, she is a homemaker. Before she met his brother, she worked as a pharmacist. Applicant last saw her when he traveled to Russia to attend his father's funeral. They communicate by text approximately twice per year to exchange pleasantries on birthdays and holidays. (Tr. 85)

Applicant's father-in-law is Jewish. He was granted political asylum to immigrate based upon religious persecution, from what was then the Soviet Union, to the United States in 1990. (Answer at 4) Applicant's mother-in-law joined her husband in the United States a few years after he arrived. She has been a naturalized U.S. citizen since 2018. (Answer at 3) Before immigrating, she worked in Russia at a department store.

Applicant has several acquaintances who live in Russia. He communicates with them infrequently. All of his close friends live in the United States.

Applicant is highly respected on the job. A retired lieutenant colonel whose 35-year career has been spent either serving in the Army or working in the defense field testified. He initially worked as Applicant's colleague, then became Applicant's supervisor, and is now a colleague again after Applicant was promoted into the senior director echelon of their company. (Tr. 101) Per this witness, Applicant is a dependable and extremely competent worker who "without question . . . puts our nation above everything else." Tr. 104-105) Moreover, this witness testified that he has "been in the defense world for 35 years and [has] never seen anyone who is as capable and who cares as much about what he does," than Applicant. (Tr. 105) Applicant has consistently earned positive performance evaluations. (Answer at 6)

Applicant is active in the community, serving on the board of directors of his homeowner's association. (Answer at 6) Also, he is an assistant coach for his son's soccer team.

Applicant has no investments in Russia. His home is valued at \$430,000 and he has cash savings of \$40,000. (Answer at 5)

Russia poses a cyber-espionage, influence, and attack threat to the United States. (HE I, Att. 2 at 1) It uses cyber-espionage to inform its decision-making and benefit its economic interests. (HE I, Att. 3 at 2) 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. (*Id.*) 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. (HE I, Att. 5 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." (HE I, Att. 1 at 1)

Russia has an abysmal human rights record. Issues include extrajudicial killings, enforced disappearances, arbitrary arrest, torture, and the severe suppression of the media. (HE I, Att. 21 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 common-sense 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 and brother, both, Russian citizens and residents 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 father-in-law has been a U.S. citizen for 30 years. He immigrated from the former Soviet regime upon being granted political asylum to live in the United States. Applicant's mother-in-law has been a U.S. citizen since 2018, and she lives with Applicant's father-in-law. These relationships do not generate a security concern.

Any contacts who are Russian citizens and residents, other than Applicant's mother and brother, are mere acquaintances of Applicant, as he communicates with them infrequently. Under these circumstances, AG ¶ 7(a) applies, but it is mitigated by AG ¶ 8(d), "contact or communications with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation." I conclude Applicant has mitigated the security concern generated by these contacts.

Although Applicant and his half-brother are currently not in frequent contact, this was not always the case, as Applicant's half-brother considered immigrating to the United States to purchase and manage two gas stations. Although he ultimately did not immigrate here, he provided hundreds of thousands of dollars to Applicant to help him operate the gas station. The nature and significance of this business relationship is too recent to conclude that their relationship is casual.

As for Applicant's mother, his bond with her has increased since his father died and her health has worsened. Unlike Applicant's relationship with his brother, whom he did not know that well growing up, he has always been close to his mother, going so far as to obtain Russian citizenship for his then toddler daughter to facilitate a trip to Russia to visit his mother.

As a repressive, autocratic country that conducts more espionage against the United States than nearly every country in the world, it is axiomatic that Applicant's relationship with his Russian family members poses a heightened risk of foreign exploitation, inducement, manipulation, or coercion. However, whether this heightened risk is disqualifying is only half of the analysis. The heightened risk analysis is ultimately dependent upon how Applicant would respond if the Russian government attempted to extort information from him by threatening either the physical or financial well-being of his relatives. Based upon the deep, longstanding ties Applicant has cultivated in the United States since immigrating 20 years ago, his cultural integration into his community, as exemplified by his soccer coaching and service on the homeowner's association, his friendships, his financial ties, and the professional goodwill that he has developed during his outstanding career, I conclude that "there is no conflict of interest . . . because [he] has such deep and longstanding relationships and loyalties in the United States that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." (AG ¶ 20(b)) I conclude Applicant has mitigated the foreign influence 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 found the testimony of Applicant's colleague, the retired Army lieutenant colonel, regarding Applicant's unparalleled commitment to his work to be particularly persuasive.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is 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 granted.

Marc Curry
Administrative Judge