



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



In the matter of:	)	
	)	
	)	ISCR Case: 19-02177
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: A. H. Henderson, Esquire, Department Counsel  
For Applicant: *Pro se*

May 21, 2020

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of Case**

On March 22, 2016, Applicant submitted a security clearance application (SF-86). On August 28, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. (Item 1.) The action was taken 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, dated June 8, 2017.

Applicant answered the SOR on August 5, 2019. He admitted the three SOR allegations, with explanations. He requested that his case be decided by an administrative judge on the written record without a hearing. On November 8, 2019, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing three Items was provided to Applicant.

The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant responded to the FORM in an undated submission, received by DOHA on September 12, 2019. He did not object to Items 1 through 3.<sup>1</sup> Applicant also submitted additional information in his FORM response, to which Department Counsel had no objection. DOHA assigned the case to me on January 21, 2020. Items 1 through 3 are admitted into evidence. Applicant's response to the FORM is marked as exhibit (AppX) A and is also admitted.

### **Procedural Rulings**

In the FORM, the Government requested I take administrative notice of certain facts relating to Russia. Department Counsel provided an eight-page summary of the facts, supported by a plethora of Government documents pertaining to Russia, identified as Item I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant is 60 years old. (GX 2 at page 5.) He avers, "I couldn't choose the country where I was born, my ancestors were exiled to Siberia from Poland and Estonia where they were fighting against the Russian Empire for freedom of their countries." (AppX A at page 1.) Applicant was previously married to a Russian women in Russia; but is now married a second time to a native born American, and has two native born American children. (AppX A at page 1.) In 1976, he attended a university in the then Soviet Union. (*Id.*) However, in 1991, nearly 30 years ago, he fled the Soviet Union, and "applied for Political Asylum." (AppX A at page 2.) Applicant has worked for his employer since February 2016. (Item 2 at page 12.)

### **Guideline B – Foreign Influence**

1.a. Applicant admits that his father, sister and two children from a previous marriage are citizens and residents of Russia. (GX 2 at pages 27~30, and 32.) (His mother died in 2018.) (GX 3 at page 3.) He last saw his father in 2004, about 16 years ago. (AppX A at page 1.) He has little contact with his sister, who works at a beauty salon (GX 2 at page 32, and GX 3 at page 14); and has not seen his children in "more

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<sup>1</sup> As it appears that much of GX 3 is an "Enhanced Subject Interview" that was reviewed by Applicant, with numerous pen and ink changes by him; it will be considered to be certified as accurate, and cited as evidence in this case.

than 30 years,” since his divorce in 1984. (GX 2 at pages 36~37, and AppX A at page 1.)

1.b. Applicant admits that he has two friends who are citizens and residents of Russia. However, he has little contact with them, one in 2014, and the other a former coworker, in 2016. (GX 2 at pages 39~40.)

1.c. Applicant admits that he has two “associate(s)” who are citizens and residents of Russia, and who are also employed by the Russian government. One works for the government “as a Deputy Governor (*sic*) for National Resources.” (GX 3 at page 14.) He contacts this Deputy Governor “via Skype approximately 1 time every 1 to 2 years,” the last time being in 2017. (*Id.*) The other “holds a high position with the IRS working for the Russian government.” (GX 3 at page 14.) He also contacts this Russian IRS official “via Skype approximately 1 time every 1 to 2 years,” the last time being in 2015. (*Id.*) These last two associates clearly pose the potential for improper foreign influence on Applicant.

### **Administrative Notice**

I take administrative notice of the following facts about Russia: Russia uses cyber operations as an instrument of intelligence collection to inform its decision-making and benefit its economic interests. Russian intelligence services have conducted sophisticated and large-scale hacking operations to collect sensitive U.S. business and technology information. Based on the eight pages summary offered by the Government, Russia appears to be a significant threat to our national security.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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; 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;

Applicant has relatives, friends and associates who are citizens and residents of Russia. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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; and
- (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.

As noted above in my Findings of Fact, Applicant's high-placed Russian associates pose a significant Foreign Influence threat to our national security. Although he Skypes them only about "1 time every 1 to 2 years," the threat is clearly there. Foreign Influence is found against Applicant.

## **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 relevant 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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Although Applicant has the full support of his American family and a close friend (AppX A at pages 3~6), overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, eligibility, and suitability for a security clearance. He has not fully met his burden to mitigate the security concerns arising under the guideline for Foreign Influence.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b.:	For Applicant
Subparagraph 1.c.:	Against 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 national security eligibility and a security clearance. National security eligibility is denied.

Richard A. Cefola  
Administrative Judge