



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 19-03576
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: P. Todd Sartwell, Esq.

09/16/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised by Applicant’s connections to Russia. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 30, 2018. On February 13, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline A (Allegiance to the United States) and B (Foreign Influence). 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 March 26, 2020, and requested a hearing before an administrative judge. The CAF returned her answer on September 30, 2020, because

she did not specifically admit or deny the allegations in the SOR. She filed an amended answer on October 13, 2020. Department Counsel was ready to proceed on January 22, 2021, but scheduling of the hearing was delayed by health and safety precautions related to the COVID-19 pandemic. The case was assigned to me on June 2, 2021.

On June 15, 2021, I notified Applicant's attorney that the hearing was scheduled for July 12, 2021, with the option of conducting the hearing in person or by video teleconference. (Hearing Exhibit I.) He opted for a video teleconference. On June 30, 2021, the Defense Office of Hearings and Appeals (DOHA) sent Applicant's attorney a hearing notice setting out the details of the video teleconference. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. The record closed on July 12, 2021, when the hearing was adjourned. DOHA received the transcript (Tr.) on July 20, 2021.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Russia, and I did so. (GX 4.) The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, she admitted the factual allegation in SOR ¶ 1.a but denied that there was any reason to question her allegiance to the United States. At the hearing, Department Counsel moved to withdraw the Guideline A allegation, and I granted the motion. (Tr. 8.)

Applicant admitted the allegations in SOR ¶¶ 2.b and 2.c. She denied the allegations in SOR ¶¶ 2.a, 2.d, and 2.e. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old Russian linguist hired by a defense contractor in January 2018. She has never held a security clearance. Her employment is contingent on her ability to obtain a security clearance.

While attending college in Russia, Applicant applied for a program that offered positions abroad for students or recent graduates. She testified that she lived in a very cold region in Siberia, found it boring, and wanted to explore other opportunities. She was accepted in the program and came to the United States in June 2009 on a work visa. She worked as an office manager from June 2009 until March 2010.

Applicant testified that she chose to come to the United States because she spoke English but did not speak the languages of other countries involved in the program. She was required to learn English in the Russian elementary school and high school, and she enrolled in additional English classes in college. (Tr. 42-43.) She also testified that the

United States was her first choice for a position abroad, because when she watched movies growing up, the United States seemed like a “great place to be.” (Tr. 43.) She testified that she has become immersed in American life and culture, to the extent that she now thinks in English instead of Russian. (Tr. 17.)

Applicant married a U.S. citizen in September 2010 and became a permanent U.S. resident. She became a U.S. citizen in August 2014. (GX 3 at 15.) She has never formally renounced her Russian citizenship, but she allowed her Russian passport to expire in January 2014.

Applicant and her husband separated in December 2015 and divorced in May 2018. (Tr. 30.) She testified that they divorced because her husband was dominated by his mother and preferred to stay home and watch television instead of going out and “doing things.” (Tr. 29-30.) They do not have much contact with each other, but they maintain an amicable relationship when they talk. (Tr.17.) They have no children.

Applicant’s ex-husband served on active duty in the U.S. Marine Corps for four years and has been employed by DOD for 24 years. Her ex-husband submitted a letter supporting her application for a security clearance. In his letter he states, “During her time in the United States of America, she developed a deep love for this country. I was at her citizenship ceremony; it was easy to see the pride and emotion of that day.”

In May 2009, Applicant obtained the equivalent of a master’s degree in taxation from the Siberian State Aerospace University in Russia. She received a bachelor’s degree from a U.S. university in May 2017 and has been taking post-graduate courses since September 2017. She obtained a graduate certificate in cyber security from a U.S. university in August 2018. (Tr. 19; GX 3 at 13.)

The SOR alleges that Applicant’s father, mother, and brother are citizens and residents of Russia. (SOR ¶¶ 2.a-2.c) It also alleges that her father formerly served as a “security inspector” and “district inspector” for the Russian government (SOR ¶¶ 2.d), and that he had provided Applicant with financial assistance of about \$1,900 per month for a total of about \$53,000 since December 2015 (SOR ¶ 2.e).

Applicant’s mother lives in an apartment that she owns, worth about \$16,130. Her father, now deceased, owned an apartment that was also worth about \$16,130 and a dacha (vacation house) worth about \$5,645. Applicant and her brother expect to inherit their parents’ property, but she intends to give her share to her brother, because she has no intention of living in Russia. (Tr. 37; GX 3 at 11.) During her counterintelligence screening interview, she commented, “Russia is a wonderful country with a horrible government.” (GX 3 at 3.)

Applicant’s father passed away in July 2018. (AX A.) He had worked for the Russian government from 1980 to 1995, and he received a pension for his service. (GX 3 at 16.) He provided financial assistance to Applicant in the amounts alleged in the SOR so that she could obtain her bachelor’s degree. Applicant’s relationship with her father

was strained before his death because he was involved with a woman who resented his family. She received about \$5,000 from her father's estate when he passed away. She did not receive any benefits from the Russian government for her father's former service. (Tr. 33-34.)

In Applicant's SCA, she stated that she has daily telephone contact with her mother. Her mother has been employed for about 15 years by a sportsmanship institute that trains and educates athletes. (Tr. 35.) She is not affiliated with the Russian government, military security, defense industry, or intelligence service. (GX 1 at 28.) In her answer to the SOR, she stated that she has "very little" verbal contact with her mother, about five times a year. However, at the hearing, she testified that they text "every week, two times a week, sometimes every day of the week depending on [her] mom's mood and situation." (Tr. 21.)

In Applicant's SCA, she stated that she had weekly telephone contact with her brother. Her brother is employed by as an electrical engineer for a construction company. (Tr. 36.) He has no affiliation with the Russian government, military, security, defense-related industry, or intelligence service. (GX 1 at 30-31.) In Applicant's answer to the SOR, she stated that she has little contact with her brother and has not seen him for about five years. However, at the hearing, she testified that she and her brother send texts every two or three months and talk on the telephone once every two or three months. (Tr. 21.)

Applicant's SCA reflects that she visited her family in Russia in October 2011, December 2013, and March 2015. (GX 1 at 36-41.) Since 2016, she has been sending her mother \$100 for Christmas or her birthday. (GX 3 at 10.) At the hearing, she testified that she and her mother vacationed together in Europe in November 2019, but she has not seen her brother since she went to Russia in 2015. (Tr. 22-23.)

Applicant testified that her brother approves of her decision to become a U.S. citizen and live in the United States. However, her mother disapproves because she believes that a daughter should stay at home and support her parents. (Tr. 25.)

Applicant was unemployed and supported by her husband during their marriage, except for employment as a waitress in a bar from December 2011 to January 2012. She was self-employed as an artist from January to December 2017, when she was offered a position as a Russian linguist, contingent on obtaining a security clearance.

In July 2018, Applicant accepted an invitation from an acquaintance to invest in a used-car dealership. She borrowed money from her credit union and used credit cards to invest about \$100,000 in a 50% interest in the business. She owes about \$32,000 on the loan. She lived in a home owned by her husband during their marriage, but she currently does not own a home or any other investment interests. (Tr. 39.)

Applicant testified that the used-car business is doing well in spite of COVID-19. Last year, she earned about \$45,000. She actively works in the business six days a week, selling cars, dealing with banks, dealing with clients, and every aspect of the business.

(Tr. 20-21, 40.) If she is hired as a linguist for one year, she will retain her financial interest in the business. If her application for a clearance is denied, she will stay in the United States and sell cars. (Tr. 41.)

A business owner, who is also an ordained minister, trusts and respects Applicant. He describes her as dedicated, hardworking, and a “woman of refreshing candor.” (AX E at 2.) Two longtime friends admire her for her candor, honesty, reliability, and kindness. (AX E at 3, 4.)

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 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.

Guideline B is 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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

The following disqualifying conditions under this guideline are relevant:

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;

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; and

AG ¶ 7(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶¶ 7(a) and (f) require 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. *See, e.g.*, ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). “Heightened risk” is not a high standard. *See, e.g.*, ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019). It is a level of risk one step above a State Department Level 1 travel advisory (“exercise normal precaution”) and equivalent to a Level 2 advisory (“exercise increased caution”).

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 family members in a hostile country have a “very heavy burden” of persuasion to show that their connections to that country do not pose a threat to U.S. security. ISCR Case No. 19-00831 (App. Bd. Jul. 29, 2020).

Applicant’s family ties to her mother and brother are sufficient to establish AG ¶ 7(a) and the potential conflict of interest in AG ¶ 7(b). However, Applicant’s potential inheritance of her parents’ property is not sufficient to establish AG ¶ 7(f). Because of the uncertainties surrounding the expectancy of an inheritance, an applicant does not have a financial stake in a country merely because he or she may inherit real or personal property at some time in the future from a parent who currently resides in that country. ISCR Case No 97-0403 at 3 (App. Bd. May 13, 1998).

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; and

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.

AG ¶ 8(a) is not established. Russia is a hostile country. Applicant has not met her very heavy burden of showing that she is not likely to be placed in a position of having to choose between the interests of her family members and the interests of the United States.

AG ¶ 8(b) is not established. Applicant has a strong emotional attachment to the United States, but she has no immediate family members, close friends, or business connections in the United States, except for her current partner in the used-car business. She was unemployed and supported by her husband during their marriage. She has no other employment record except for her brief employment as a business manager from June 2009 to March 2010 and employment as a waitress in a bar from December 2011 to January 2012. She does not own a home or have any other financial investments in the United States. Her only financial connection to the United States is her joint ownership of a used-car dealership.

AG ¶ 8(c) is not established. Applicant has given inconsistent information about the frequency of contacts with her mother and brother. In her SCA, she stated that she has daily telephone contact with her mother. In her answer to the SOR, she stated that she has “very little” verbal contact with her mother, about five times a year. However, at the hearing, she testified that they text “every week, two times a week, sometimes every day of the week depending on [her] mom’s mood and situation, and that she and her mother traveled to Europe together in 2019. In her SCA, she stated that she had weekly telephone contact with her brother, but in her answer to the SOR, she stated that she has little contact with her brother and has not seen him for about five years. At the hearing, she testified that she and her brother send texts every two or three months and talk on the telephone once every two or three months.

It appears that Applicant tried to minimize her contacts with her mother and brother in her answer to the SOR, but admitted frequent contacts in her SCA and at the hearing. Nevertheless, even if Applicant’s contacts were infrequent, she has not overcome the presumption that they 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 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.

I have incorporated my comments under Guideline B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid and sincere at the hearing, and her emotional attachment to the United States appears genuine. However, that emotional attachment is not backed up with relationships and loyalties in the United States sufficient to carry her very heavy burden of persuasion. 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 connections to Russia.

Formal Findings

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

Paragraph 1, Guideline A (Allegiance to the United States):	WITHDRAWN
Subparagraph 1a:	Withdrawn
Paragraph 2, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 2.a, 2.d, and 2.e:	For Applicant
Subparagraphs 2.b and 2.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