



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



In the matter of:)	
)	
)	ADP Case No. 20-00838
)	
Applicant for a Public Trust Position)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
 For Applicant: *Pro se*
 12/02/2021

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility to work in a public trust position in the defense industry. Applicant failed to mitigate the foreign influence concerns raised by his relationships with his wife and parents-in-law who are citizens of Russia. His request for continued eligibility to occupy a position of trust is denied.

Statement of the Case

On May 26, 2020, the DOD issued a SOR detailing security concerns under the foreign influence guideline. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), effective June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant public trust eligibility.

Applicant answered the SOR and requested a hearing. At the hearing, convened on July 27, 2021, I admitted as Hearing Exhibits (HE) I – II: the case management order issued on July 2, 2021; and, the disclosure letter the Government sent to Applicant,

-serving him with the documents supporting the Government's case against him, dated April 2, 2021. I also admitted, without objection, Government Exhibits (GE) 1 and 2, and Applicant Exhibits (AE) A through D, without objection. I received the transcript (Tr.) on August 4, 2021. (Tr. 12-15)

Procedural Matters

Request for Administrative Notice

At the hearing, Department Counsel requested that I take administrative notice of certain facts regarding the Russian Federation (Russia). I granted the request without objection from Applicant, and have considered information contained in the memoranda and attached documents related to each country, which are appended to the record as HE III. (Tr. 13)

Findings of Fact

Applicant, 50, has worked as a project manager for a federal contracting company, operating in the healthcare industry, since August 2005. He was initially granted public trust access in approximately 2006. He completed his most recent security clearance application in January 2019, disclosing his September 2016 marriage to a woman who is a citizen of Russia. The SOR alleges as disqualifying under the foreign influence guideline, Applicant's relationship with his wife, and her parents who are both citizens and residents of Russia. Although the relationship is not alleged in the SOR, Applicant has a brother-in-law who is also a citizen and resident of Russia. (GE 1)

Russia has a highly centralized, weak multi-party political system dominated by the president. Russia has significant human-rights problems, marked by restrictions on civil liberties, discrimination, denial of due process, forced confessions, torture, other prisoner mistreatment, and the government's failure to prosecute officials who commit serious violations. Government officials also engage in electronic surveillance without proper authorization. (HE III)

Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advance weapons technologies beneficial to Russia's military modernization and economic development. Russia's intelligence services as well as private companies and other entities frequently seek to exploit Russian citizens or persons with family ties to Russia who can use their insider access to corporate networks to steal secrets. They also have offered financial inducements to U.S. government officials and citizens to encourage them to compromise classified information. Russia's attempts to collect U.S. technological and economic information represent a growing and persistent threat to U.S. security. (HE III)

Applicant met his wife in January 2016, while she was in the United States visiting friends. He sponsored her for permanent resident status, and she has resided in the United States with him since July 2016. She has worked as a project manager for a well-known global marketing information services firm since May 2017. Applicant's wife

filed the documents required to begin the naturalization process in March 2021. Applicant believes the process will take between 8 and 16 months. (GE 2; Tr. 16-17, 20)

In his March 2019 subject interview, Applicant told the investigator that before immigrating, his wife worked in public relations for a Russian soccer club and for a Russian government agency. He reported that his father-in-law served in the Russian military as a finance officer, and that he worked for another Russian government agency in a finance-related position until he retired. He reported that his mother-in-law retired from a secretarial position with the Russian government. Applicant stated that his brother-in-law owns a construction company that builds residential homes, and that he does not have any contact with the federal government. In his answer to the SOR, he confirmed his father-in-law retired from the Russian military in 1996, and that he retired from his position in the Russian government in 2014. He also confirmed his mother-in-law retired from her government position in 2017, and indicated that both receive pensions from the Russian government. He confirmed this information again at the hearing. (GE 2; Tr. 18, 22-25)

At the hearing, Applicant's wife testified about her and her parents' professional careers. She corrected Applicant's previous statement that she worked for a government agency, stating that she worked for a privately owned outdoor recreation facility. Although she could not recall the specifics of her father's military service, she testified that neither of her parents maintain contact with any government officials. At the end of her testimony, she offered, for the first time, that there had been a misunderstanding about her parent's work history. She stated that her parents did not work for the Russian government, but for the city council of her hometown. (Tr. 28-40)

Applicant's wife has traveled to Russia three times since 2017. He accompanied her in 2018 and 2019. Outside of these visits, his wife maintains weekly contact with her parents. She occasionally sends them between \$100 and \$500 as needed. Because they do not speak a common language, Applicant does not maintain an independent relationship with his parents-in-law. (Tr. 17-18, 20-21, 24-25, 27)

In support of his application, Applicant provided four character letters from co-workers that describe him as hard-working, diligent, and of high ethical character. Each writer considers Applicant trustworthy. Applicant has owned his home since 2005. He has no foreign assets. (GE 1; AE A-D)

Policies

When evaluating an applicant's suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

Foreign Influence

“[F]oreign contacts and interests . . . are a national security concern . . . if they create circumstances in which the individual may be manipulated or induced to help a foreign person in a way that is inconsistent with U.S. interest or otherwise made vulnerable to pressure and coercion by any foreign interest.” (AG ¶ 6) An assessment of foreign contacts should consider the country in which the foreign contacts are located, including but not limited to, consideration of whether it is known to target U.S. citizens to obtain classified or sensitive information, or is associated with a risk of terrorism.

The SOR alleges as disqualifying Applicant’s relationships with his wife, a citizen of Russia, and her parents who are citizens and residents of the same. Russia is an aggressive participant in industrial espionage against the United States, oftentimes relying on strategies that seek to exploit individuals with familial ties to the country. Applicant’s wife maintains a close relationship with her parents as evidenced by the frequency of her phone calls with her family, her annual visits home to visit them between 2017 and 2019, and her occasional financial support.

Also of security significance is Applicant’s in-law’s employment history with the Russian government. The record establishes that Applicant’s father-in-law is a retired military officer. However, the record contains conflicting information about his in-laws more recent positions. Before the hearing, Applicant made three statements indicating that his in-laws were both employed as civil servants with the Russian government. His wife offered new and conflicting testimony that her parents were employees of the municipal government in her hometown. Without corroborating evidence of either

statement, I resolve the conflict in favor of protecting the U.S. interests and the national security.

Given these facts, the evidence supports the Government's *prima facie* case regarding each of the alleged relationships. The following foreign influence disqualifying conditions apply:

AG ¶ 7(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is 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(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Having established its *prima facie* case, the burden shifts to Applicant to present witnesses and other evidence to rebut, explain, extenuate, or mitigate facts he has admitted or those established by Department Counsel. Applicant has the ultimate burden of persuasion in obtaining a favorable clearance decision. (DOD Directive, Additional Procedural Guidance ¶ E3.1.15.) He has failed to do so.

The security risk is not mitigated because Applicant's wife has applied for U.S. citizenship, or because he and his in-laws do not speak the same language. Though Applicant may not have any direct ties of obligation to his in-laws, those bonds of obligation are imputed to him through his wife, who maintains close relationships with her parents. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. *See generally* ISCR Case No. 01-03120, (App. Bd. Feb. 20, 2002). "[A]s a matter of commonsense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). Accordingly, Applicant's relationship with his in-laws cannot be considered casual, nor can his sense of obligation to them be considered minimal. None of the foreign influence mitigating conditions apply.

In reaching this conclusion, I have also considered the whole-person factors in AG ¶ 2(d). A finding that Applicant failed to mitigate the security concerns raised by his relationship with his Russian wife and in-laws does not suggest that Applicant is untrustworthy or unreliable. It is not a finding that Applicant is unable to follow the rules regarding the proper handling and safeguarding public trust information. It is a finding necessitated by the limited and conflicting information in the record. Without more information, Applicant's close ties to Russian citizens presents an unacceptable risk that he may be influenced to act in a manner inconsistent with U.S. interests.

Formal Findings

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, Foreign Influence	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is denied.

Nichole L. Noel
Administrative Judge