



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01380
)
Applicant for Security Clearance)

Appearances

For Government:
Andrea Corrales, Esq., Department Counsel

For Applicant:
Pro se

11/03/2021

Decision

MURPHY, Braden M., Administrative Judge:

Applicant’s wife and three adult children are dual U.S.-Russian citizens, as is Applicant himself. His elderly father-in-law is a citizen and resident of Russia. Applicant and his family continue to own a small apartment in Russia. He and his wife have bank accounts in Russia through which they receive monthly benefits from the Russian government. Applicant’s wife uses her benefits to support her elderly father. Given the strong heightened risk shown by the Russian government’s relationship with the United States and with the Russian people, Applicant did not provide sufficient evidence to mitigate foreign influence security concerns under Guideline B. The personal conduct allegations under Guideline E are either mitigated or not established. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 1, 2018. On November 5, 2020, the Department of Defense (DOD) issued a Statement of

Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The Defense Department issued the SOR 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective June 8, 2017. Applicant answered the SOR on September 29, 2020, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

On November 5, 2020, Department Counsel issued an Amendment to the SOR, and added three allegations, all under Guideline E, the personal conduct guideline of the Directive. Applicant answered the new allegations on November 18, 2020. He provided narrative explanations, and also provided some documents.

The case was assigned to me on May 7, 2021. On June 11, 2021, DOHA issued a notice scheduling the hearing for July 8, 2021. On July 6, 2021, Applicant requested a continuance for medical reasons. The request was granted without objection. (Hearing Exhibit (HE) I). The hearing was rescheduled for August 12, 2021, a mutually agreeable date, and a new notice of hearing was duly issued.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 and 2, which were marked and admitted without objection. The Government also submitted documents for administrative notice, discussed below. Applicant and his wife testified. Applicant's Exhibits (AE) A through D were marked and admitted without objection. He had submitted AE A through AE C with his Answer to the SOR Amendment.

During the hearing, Applicant also offered a document in the Russian language, from a Russian bank. It was marked as AE E. Department Counsel objected to its admission because AE E is in a foreign language and was not translated. However, the document also has numbers and dates reflecting certain deposits, data that does not require translation. AE E was therefore admitted without objection for the limited purpose of considering those numbers and dates. (Tr. 54-59)

At the end of the hearing, I held the record open until August 25, 2021, to afford Applicant the opportunity to submit additional documents. He timely submitted five work-related letters of recommendation (marked together as AE F), two letters from friends (marked together as AE G), and two documents regarding transfer of ownership, concerning an apartment in Russia (AE H) and a bank account in Russia (AE I). All of Applicant's post-hearing exhibits are admitted without objection. The record closed on August 25, 2021. DOHA received the transcript (Tr.) on August 20, 2021.

Request for Administrative Notice

At Department Counsel's request, I took administrative notice of certain facts concerning Russia and the United States' relationship with Russia. Department Counsel

provided supporting documents that verify and provide context for those facts. They are detailed in the Government's administrative notice filing (AN I) and addressed in the Findings of Fact. Where appropriate, I have taken administrative notice of updated and current information from the State Department website, consistent with my obligation to make assessments based on timely information in cases involving the potential for foreign influence. ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.")

Jurisdiction

Applicant is employed by a U.S. government contractor. The cabinet department that oversees the federal agency where Applicant works has an agreement with DOD establishing DOHA jurisdiction over the case. See Directive 5200.6 at ¶ 2.2. (Tr. 12-14)

Findings of Fact

Through his explanations, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b (in part), 1.c, 1.d, 1.e (in part), and 1.f. The portions of the allegations that Applicant did not clearly admit, I consider that he denied. In answering the Amendment to the SOR, Applicant admitted SOR ¶ 2.a and denied SOR ¶¶ 2.b and 2.c, again with explanations. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony submitted, I make the following findings of fact.

Applicant is 63 years old. Both he and his wife were born, raised, and educated in the former Soviet Union, in a Siberian city, in what is now Russia. They married in 1979. (GE 1 at 26) Applicant earned a master's degree in 1980 (age 22) and a doctorate in 1983 (age 25) at a prestigious university or academic institution in Siberia. (GE 1 at 13; Tr. 36-37, 40, 76-77) He has published three books in his field and many professional and scientific articles. Three times, he was named the best scientist at the Siberian academy or institute where he worked until coming to the United States. (Tr. 36-37)

Applicant and his wife have three grown children (and another son, who is deceased). (Tr. 93) Applicant and his family came to the United States in 1999 when he was granted entry under an H1B Visa. (Tr. 79-80) Applicant became a naturalized U.S. citizen in August 2008. (GE 1 at 10)

From 2005 to 2011, Applicant worked for a large defense contractor as a senior software engineer. He worked for most of 2012 with a large insurance company. From 2013 to early 2016, he was employed by federal contractors. (GE 1 at 18-21) Between early 2016 and mid-2018, he worked either for federal contractors or independently as a consultant. Since July 2018, he has worked as a cyber-security specialist or software developer for a federal contractor. (GE 1 at 14-17; GE 2 at 12; Tr. 33, 70-75)

Applicant was granted eligibility for a position of public trust in June 2013 for work as a contractor with the another government agency. He was also granted a secret clearance in October 2016 for similar work with another government agency. (GE 1 at 55; 2 at 11; Tr. 14, 19, 49, 72)

Applicant and his wife own their home in the United States. (AE B, AE C) He has a six-figure annual salary and a net worth estimated in the mid-six figures. (Tr. 75-76, 120-121; GE 2 at 8. In Russia, Applicant's wife worked as a geophysicist. As such, like Applicant, she was a government employee. She is now a housewife and grandmother. (GE 2 at 13; Tr. 91-92, 164-165)

Applicant and his wife are both dual U.S.-Russian citizens. (GE 1 at 25, GE 2 at 13) (SOR ¶¶ 1.a, 1.f) They both hold valid Russian passports. (GE 2 at 13) He declared on his SCA that "I want to remain Russian." (GE 1 at 9) In his background interviews and in his hearing testimony, he stated that he declined to relinquish his Russian citizenship because it is extremely difficult to do so, and because keeping a Russian passport allows for easier travel to Russia without the need for a visa. (GE 2 at 13, 15; Tr. 32-36) His parents and a son are buried in Russia, and he wants to be able to visit their gravesites. (GE 2 at 12; Tr. 195)

Applicant testified that he uses a Russian passport only to enter Russia. He uses his U.S. passport when he exits Russia. When entering and exiting the United States, he said he shows both passports so as to be fully transparent with U.S. authorities. He anticipates that he will renew his Russian passport when it expires in 2025. (Tr. 35, 116-117)

Applicant noted in his background interview that he has dual loyalty and allegiance, to both Russia and the United States. (GE 2 at 13) He said if the United States and Russia were to enter into conflict, he would not fight for either side. (GE 2 at 17) He later said if there were a conflict, he would fight against the people causing the conflict, no matter who they were. He said he feels allegiance to both countries, and also said he has no preference for either the U.S. or the Russian government. (GE 2 at 18) This "dual allegiance" is alleged in the SOR as a personal conduct security concern. (SOR ¶ 2.a)

Applicant testified that he participated in compulsory military training while in university, but never served in either the Soviet or Russian military. (Tr. 77) When he worked in Russia as a mathematician and scientist, he was considered a government employee. (Tr. 78) (Later in his testimony, he disputed that the academy where he worked was a government institution; he said it was "independent.") (Tr. 195) He was never involved in political organizations or the Communist Party. "All my heart is here," he said. All of his family are in the U.S. but for his father-in-law. (Tr. 33, 67) He reiterated these sentiments in closing, and said he would never "be a spy against [his] grandkids" from here (the United States. (Tr. 194-195) He is proud of his professional recognition in Russia, but he said, "I came here to make this country better." (Tr. 195)

Applicant's three grown children, all born in the 1980s, now live in the U.S., near Applicant and his wife, and are all naturalized U.S. citizens. (GE 1 at 28-31; GE 2 at 13; Tr. 66) One son is an engineer; another son works in investments; and their daughter is a housewife, married to an American. Their daughter has two young children, both born in the United States. (Tr. 65-67, 93, GE 2 at 16)

SOR ¶ 1.b alleges that all three of Applicant's children are dual U.S.-Russian citizens. In his SOR Answer, Applicant said only his daughter is a dual citizen. His two sons have lived in the U.S. for 20 years, have not had active Russian passports since 2012, and have not travelled to Russia for several years before then. (Answer; Tr. 65). His daughter travelled to Russia once for medical treatment a few years ago. (Tr. 66) There is no indication that Applicant's two sons have renounced their Russian citizenship (something which Applicant testified is very difficult to do).

Applicant's parents are deceased, as is his mother-in-law. (GE 1 at 27-28, 33) He has one sister, who lives in Germany. (Tr. 108, GE 2 at 6)

Applicant's father-in-law, age 89, is a citizen and resident of Russia. (Tr. 93) (SOR ¶ 1.c) He is a retired scientist and engineer. As such, he was considered a government employee. His father-in-law is blind, an invalid and has been in a nursing home since June 2020. He was moved there with the help of a neighbor, A, and a daughter from his second marriage. (GE 2 at 14-16; Tr. 96-97, 149, 166-168))

Applicant and his wife see her father in person when they visit Russia. (GE 1 at 31-32; Tr. 95) He rarely speaks to his father-in-law by phone, but his wife speaks to her father briefly about once a week. (GE 2 at 15; Tr. 95, 149-151) She is very close to her father. She helped care for him and her brother after her mother died after a long illness when Applicant's wife was a teenager. (Tr. 151-152) Applicant's wife provides financial support to her father, as discussed below. His wife's father has four children from later marriages. Applicant's wife has little contact with them because of the age difference. (Tr. 167-170) They are not alleged in the SOR.

Applicant's brother-in-law is a citizen and resident of Russia. He lives in Siberia. He is a scientist and Russian government employee. Applicant has no contact with him. (Tr. 109) He was not alleged in the SOR.

Applicant and his wife travelled to Russia for vacations and family visits in the summers of 2009, 2015, 2017, and 2019. (GE 1 at 37, 46, 49; GE 2 at 9). Applicant has not been back to Russia since July 2019. (Tr. 135)

While studying and working at the institute in Siberia, Applicant and his family lived for several years in a dormitory. In about 1995, because of his excellent work, he was allowed to move to a small, university-owned apartment. The apartment was only a few hundred square feet. (Answer; Tr. 36-37, 78-79; AE A) Applicant and his family were granted ownership of the apartment through privatization of state property in the

mid-1990s, after the collapse of the Soviet Union. They were granted ownership but could not sell it. (Tr. 152-153; AE A)

They maintained ownership of the unit after they emigrated to the United States, and continue to own the unit now. The apartment is owned jointly by Applicant, his wife, and their children (not solely by his wife, as alleged in SOR ¶ 1.d). The alleged value of the unit (about \$30,000 US) is noted in the record (GE 2 at 12; Tr. 80) but the true value is not documented. Applicant and his wife have had renters in the past, and they used the rental income (of about \$250 a month, as alleged) to support Applicant's father. (GE 2 at 13) The unit is currently vacant, because of the pandemic. (Answer; Tr. 68) They last had renters about a year ago. (Tr. 81) Applicant had no direct contact with any renters. (GE 2 at 17; Tr. 63-64, 81-82)

Applicant indicated during his background interview that he may want to keep the apartment and live there in retirement, in part, he said, because it is expensive to retire in the United States. (See GE 2 at 17-18) Applicant declined at hearing to confirm this as he made that statement during his background interview (though he adopted the interview summaries in GE 2 as accurate without making changes). Regarding his present intent, he testified that he has not decided where to retire. (Tr. 84-91)

Applicant noted that he has to pay taxes and utilities (energy and water) for the Russian apartment "even if we don't use it." (Tr. 62-63) He said his wife is more involved with that process than he is. (Tr. 83-84) He also stated that he and his wife stay at the apartment when they visit Russia. (Tr. 80, 84, 112-116) Applicant acknowledged that he still owned the property, still used it, and was technically allowed to sell it. (Tr. 132) However, he said that selling the unit is difficult, as it would require all of the family members to travel to Russia, and his children do not want to do that. (Tr. 37-42, 153-155) Applicant said the apartment is in disrepair. He would like to "get rid of it." (Tr. 37-38) In a post-hearing letter, Applicant expressed a willingness to relinquish his ownership of the apartment to his granddaughter. (AE H)

Both Applicant and his wife were born in 1958. When his wife turned 55 (in 2013) and when he turned 60 (in 2018), they both became eligible to receive a monthly financial benefit from the Russian government. She did not learn of her eligibility until later. (Tr. 159-163) Applicant's wife said she has been receiving the benefit money for about five years. (Tr. 175)

The amount of the benefits Applicant and his wife both receive is equivalent to about \$120 US per month (not \$200 per month, as alleged). (SOR ¶¶ 1.d, 1.e) The benefit is available to any Russian citizen and does not appear to be based on the fact that both Applicant and his wife are former Russian government employees. At various times, Applicant described the benefit as a "pension," (GE 2) and at other times he disputed that term. (Tr. 60, 63) Regardless, the money seems to be the equivalent of a social security payment or benefit from the Russian government, available to Russian citizens above a certain age.

Applicant's wife uses her monthly benefit to support her elderly father. (SOR ¶ 1.e) She uses the money for her father's medical care, which costs the equivalent of about \$500 US per month. (Tr. 46-47, 117) She noted that her father, being in his 80s, also receives a financial benefit from the Russian government, and that money, too, is used for his nursing care. (Tr. 156-159)

The primary caregiver for Applicant's father-in-law is a neighbor, A, who is herself retired and in her 80s. A is a long-time, trusted acquaintance of the family. Applicant and his wife have given A authority to withdraw funds from his wife's Russian bank account (like a power of attorney) for the father's care. A also manages Applicant's apartment in Siberia and sees to it that the taxes and utility bills are paid. (Tr. 82-83, 143-144, 172-173) Applicant has contact with A about once a year. However, Applicant and his wife are "very close" to A. A is retired from a job as a technician at a Russian academic institute. (Tr. 110-111) Other than A and his father-in-law, Applicant maintains contact with no other Russian citizens. (Tr. 108)

Applicant's \$120 monthly benefit is deposited into an account at Russian Bank S set up for that purpose. (GE 2 at 7, 16) (SOR ¶ 1.e) Applicant has never withdrawn the money, which accumulates in that account. (Tr. 45, 117, 159, AE E) He said that for him to do so, he would have to travel to Russia, which would cost more money than is in the account. (Tr. 42-43, 80, 104) He said he was not contacted about the account, but it was widely publicized in the media when the benefit system was established. (Tr. 105) He has taken no active steps to close the Russian bank account or to renounce the pension. (Tr. 105-107) After the hearing, Applicant provided a letter for the record indicating that the account contains the equivalent of \$3,419 US. He is willing to relinquish ownership of it and transfer it to his wife. (AE I)

When he submitted his August 2018 SCA, Applicant did not disclose the apartment in Russia, the Russian bank accounts, or the benefits he and his wife receive from the Russian government. These omissions are alleged as deliberate falsifications under Guideline E (SOR ¶¶ 2.b, 2.c)

Section 20A of Applicant's August 2018 SCA (Foreign Financial Interests – Real Estate) asks, "Have you, your spouse, or legally recognized domestic civil union/domestic partner, cohabitant, or dependent children EVER owed, or do you anticipate owning, or plan to purchase real estate in a foreign country?" Applicant answered "No." (GE 1 at 34)

SOR ¶ 2.b alleges that Applicant deliberately failed to disclose that his wife owns an apartment in Russia and receives about \$250 in monthly rental income from it (as alleged in SOR ¶ 1.d). Applicant denied SOR ¶ 2.b, asserting that he had answered the question correctly on his SCA because he was receiving no financial benefit or rent at that time, and also because he was not able to sell it. (Answer, Tr. 64)

At his hearing, Applicant asserted that he misunderstood the question because it was not stated clearly. (Tr. 62, 139-140) He stated he did not want to lie and intended to

be truthful. (Tr. 140) He asserted that the question asked about property being used for “commercial purposes.” (Tr. 62) (The question does not actually refer to “commercial purposes.”) (GE 1 at 34) Applicant also testified that he answered “no” because he did not pay attention to the full question on the SCA, and focused more on the portion of the question asking about plans to purchase real estate in the future. (Tr. 124-126)

Section 20A of Applicant’s August 2018 SCA (Foreign Financial Interests – Foreign Benefit) asks, “As a U.S. citizen, have you, your spouse, or legally recognized domestic civil union/domestic partner, cohabitant, or dependent children received in the last seven (7) years, or are eligible to receive in the future, any educational, medical, retirement, social welfare, or other such benefit from a foreign country?” Applicant answered “No.” (GE at 34)

SOR ¶ 2.c alleges that Applicant deliberately failed to disclose that he and his wife receive monthly pensions from Russia (SOR ¶¶ 1.e and 1.f) in answer to that question. Applicant denied SOR ¶ 2.c. He stated that, he learned during the family’s 2017 trip to Russia that he may be eligible for a pension (since he was soon to turn 60). He went to the pension office but they were not able to provide confirmation. (Answer; Tr. 99-103) In 2019, when they again visited Russia, Applicant learned that he was eligible and that the equivalent of about \$100 a month in benefits had been deposited into an account at Russian bank S, beginning on May 15, 2018. However, he said he did not know about the deposits when he prepared his SCA in August 2018, so his answer was truthful. (Answer) (Tr. 50-61; AE E) Applicant testified that he learned from his wife that she had money in her Russian account that she was using for her father. She then suggested that he might have an account as well. (Tr. 141)

Applicant’s wife testified that Applicant was not aware that the money had been deposited into the account until 2019, because “we had no connection to it.” (Tr. 162) She also said they went to the bank in 2017, before he turned 60. (Tr. 176)

Applicant’s first background interview occurred in November 2018. He reviewed his SCA with the interviewing agent, and discussed his family members, including his father-in-law, his employment history and his dual citizenship. He also discussed the apartment in Russia, and the fact that his wife had used the rental income from the unit to support her father-in-law. There was no discussion of the issue of monthly benefits from the Russian government. (GE 2 at 11-13)

Applicant testified that he did not learn about the bank account in Russia until 2019. (Tr. 45, 117) He testified, “I don’t care about this pension,” and “I never saw these statements before I arrived [in] Russia in August 2019.” (Tr. 136-137, 141-142) He and his wife travelled to Russia in July and August 2019. (GE 2 at 9) Yet he discussed the bank accounts and the financial benefits in his second background interview, which occurred in June 2019, before that trip. (GE 2 at 14)

During that June 2019 interview, Applicant disclosed both his and his wife’s Russian bank accounts, and the fact that they both received monthly benefits from the

Russian government. He also disclosed that his wife used her monthly benefits to support her father. (GE 2 at 16) He said in the interview that he did not list the accounts because of the small amounts of money involved. (GE 2 at 16) He testified that he did not hide the apartment or the money that had accumulated in the accounts. (Tr. 140, 142) He disclosed the assets during his interview when he was asked about them. (Tr. 143)

Applicant's discussion of the accounts and the benefits during his second interview calls into question the veracity of his testimony and explanation in his Answer that he learned of the accounts and the deposits during his 2019 trip to Russia – since that trip occurred a month after his second background interview. (Tr. 128-131) At his hearing, Applicant acknowledged that he knew in 2017 that he might be eligible for such benefits, when the pension office told him about them. (Tr. 127-128)

Section 20 of Applicant's SCA also includes a question asking, "Have you ever provided financial support to any individual?" Applicant answered, "No." (GE 1 at 34) Applicant explained during his testimony that his answer was truthful because it was his wife who provided financial support to her father, using her money. However, they also used money collected as rental income from their jointly owned apartment in Russia. He also said it was possible that his wife supported her father using money Applicant had earned in the United States. (Tr. 133-135) Falsification of this question is not alleged in the SOR.

Applicant testified that he loves his job and his work and has provided value to his federal agency. (Tr. 47-48) He testified that he is an honest man, not involved in politics, doing good work that improves or provides value to his job. Loss of his job will damage his family. He does not intend to switch jobs at his age, and expects to retire in three to five years. (Tr. 69, 74)

Applicant's wife testified that her husband is "the most hard-working person." He is very knowledgeable and effective at work. His company appreciates him and the help he provides them. (Tr. 183-184)

Five co-workers of Applicant's, including a supervisor, provided recommendation letters attesting to his character. He has excellent professional skills and is very knowledgeable. He is well respected and appreciated. He has an excellent work ethic. He is mission-oriented, reliable, and responsible. (AE F) Two long-time personal friends of Applicant's provided reference letters. They both regard Applicant as reliable, responsible, honest, and compassionate. (AE G)

Russia

The Russian Federation has a highly centralized, authoritarian political system dominated by President Vladimir Putin. (AN Item I) The Office of the Director of National Intelligence (ODNI) has determined that Russia is a highly capable and effective adversary, integrating ongoing cyber-espionage, attack, and influence operations to

achieve its political and military objectives. The ODNI expects that Russia's intelligence services will continue to target the United States, seeking to collect intelligence, erode U.S. democracy, undermine U.S. national policies and foreign relationships, and increase Russia's global position and influence. (AN Item II)

The administrative notice filing and supporting documents detail numerous Russian intelligence operations in and against the United States since 2017 that have led to federal criminal indictments against Russian intelligence operatives. (AN Filing at4-7)

In its 2018 Foreign Economic Espionage in Cyberspace Report, the National Counterintelligence and Security Center reported that Russia uses cyber operations as an instrument of intelligence collection to inform its decision-making and benefit its economic interests, and that Russian intelligence services have conducted sophisticated and large-scale hacking operations to collect sensitive U.S. business and technology information. (AN Item VII)

The ODNI has reported that Russian efforts to influence the 2016 U.S. presidential election demonstrated a significant escalation in directness, level of activity, and scope of effort compared to previous operations. The ODNI assessed that Russia would again attempt to influence the 2020 U.S. elections. Russia's persistent objective is to weaken the United States and diminish its global role. (AN Items IV and V)

The United States imposes sanctions on Russian persons and entities in response to Russian conduct, including its illegal annexation of Crimea, invasion of eastern Ukraine, election interference, malicious cyber-enabled activities, and human rights abuses. (AN Item XX)

According to the U.S. State Department's website, the State Department's current Travel Advisory for Russia is Level 4: Do Not Travel, due to COVID-19 and related entry restrictions, terrorism, harassment by Russian government security officials, the U.S. Embassy's limited ability to assist U.S. citizens in Russia, and the arbitrary enforcement of local law. The current travel advisory, dated November 2, 2021, is substantially similar to AN Item XXI, the State Department's Travel Advisory for Russia from August 2020.

U.S. citizens, including former and current U.S. government and military personnel and private citizens engaged in business, who are visiting or residing in Russia have been interrogated without cause, threatened by Russian officials, and may become victims of harassment, mistreatment, and extortion. All U.S. government personnel should carefully consider their need to travel to Russia. (AN Item XXI)

Russian security services have arrested U.S. citizens on spurious charges, denied them fair and transparent treatment, and have convicted them in secret trials without presenting evidence. Russian officials may unreasonably delay U.S. consular assistance to detained U.S. citizens. Russian authorities arbitrarily enforce local laws

against U.S. citizen religious workers and open questionable criminal investigations against such individuals. Russian security services are increasingly arbitrarily enforcing local laws targeting foreign and international organizations they consider “undesirable,” and U.S. citizens should avoid travel to Russia to perform work for or volunteer with non-governmental organizations. (AN Item XXI)

Russia enforces special restrictions on dual U.S.-Russian nationals and may refuse to acknowledge dual nationals’ U.S. citizenship, including denying access to U.S. consular assistance and preventing their departure from Russia. (AN Item XXI)

Terrorist groups, transnational and local terrorist organizations, and individuals inspired by extremist ideology continue plotting possible attacks in Russia. Terrorists may attack with little or no warning, targeting tourist locations, transportation hubs, markets, shopping malls, local government facilities, hotels, clubs, restaurants, places of worship, parks, major sporting and cultural events, educational institutions, airports, and other public areas. (AN Item XXI)

Telephone and electronic communications in Russia are subject to surveillance, which can potentially compromise sensitive information. The Russian System for Operational-Investigative Activities permits authorities to monitor and record all data lawfully that traverses Russia’s networks. (AN Item XXIII)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, these guidelines are applied 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(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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 details the security concern about “foreign contacts and interests” as follows:

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.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying 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;

(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;

(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; and

(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.

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism.

A heightened security risk is established by the administratively noticed facts about Russia in the record. These include Russia's ongoing, persistent, pervasive attempts to target the United States, seeking to collect intelligence, erode democracy, undermine U.S. national policies and foreign relationships, and increase Russia's global position and influence. A heightened risk is also established due to Russia's mistreatment and harassment of U.S. citizens, including former and current U.S. government and military personnel and private citizens, the risk of electronic and other surveillance, and human rights issues.

Both Applicant (SOR ¶ 1.f) and his wife (SOR ¶ 1.a) are dual U.S.-Russian citizens, as are their three grown children (SOR ¶ 1.b). The fact that they all live in the United States may limit the security risk, but AG ¶¶ 7(a) and 7(b) nonetheless apply. AG ¶ 7(e) also applies to Applicant's wife, since she lives with Applicant. AG ¶¶ 7(a) and 7(b) also apply to Applicant's father-in-law, who is a citizen and resident of Russia.

Applicant and his wife, together with their children, maintain joint ownership of the apartment in the Siberian city where they all used to live. Applicant and his wife have received rental income from the unit in the past, but do not receive any currently. They also maintain accounts at a Russian bank, through which they both receive monthly benefits from the Russian government due to their age. (Though not alleged, Applicant's father-in-law receives these benefits also). The monthly benefits, and the past rental income they received, both a few hundred dollars a month, are not particularly substantial compared to their income and assets in the United States.

However, given the strong heightened risk shown in the Administrative Notice documents about Russia and Russia's relationship with the United States, AG ¶ 7(f) nonetheless applies.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, 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 U.S.;

(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.

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant, his wife, and their three children are all dual citizens of the United States and Russia. The nature of the Russian government, their active and pervasive intelligence-gathering efforts against the United States and against U.S. interests, and the Russian government's relationship with, and treatment of, its own people (and citizens of the United States), precludes application of AG ¶ 8(a). On the basis of the administrative notice materials, there is strong evidence that Applicant may be placed in position where he may be forced to choose between U.S. and Russian interests, and a heightened risk of the potential of exploitation, duress or coercion is shown.

Further, Applicant specifically stated during his background interview that he has dual loyalty and allegiance, to both Russia and the United States. (GE 2 at 13) He said he feels allegiance to both countries, and also said he has no preference for either the U.S. or the Russian government. (GE 2 at 18)

As discussed under Guideline E below, this "dual allegiance" is alleged in the SOR as a personal conduct security concern. (SOR ¶ 2.a) But it really goes to the heart of the Guideline B concern, since such a statement places Applicant's allegiances at

issue by definition. For AG ¶ 8(a) to apply, it must be “unlikely [that] 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 U.S.” Applicant, through these statements, is already there.

Further, Applicant’s elderly father-in-law remains in Russia. Understandably, Applicant’s wife feels a strong bond of affection for him, and she acts upon it through her efforts to support his medical care. Moreover, Applicant, his wife, and her father, all derive benefits from the Russian government through their Russian bank accounts. Applicant’s wife depends upon her government benefits to support her father. The heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion remains, and AG ¶ 8(a) does not apply.

Applicant, his wife, and their three grown children have lived in the United States for over 20 years. They have all established their lives here. AG ¶ 8(b) therefore has some application. But again, Applicant maintains strong ties to Russia through his, and his family members’ dual citizenship, his maintenance of an apartment there, as well as bank accounts and ongoing receipt of Russian government benefits. It cannot be said that Applicant “can be expected to resolve any conflict of interest in favor of the U.S. interest” as AG ¶ 8(b) requires. Given his actions, his ongoing connections to Russia, and his stated sentiments, AG ¶ 8(b) does not fully apply.

AG ¶ 8(c) does not apply. The contact and communication Applicant and his wife maintain with her father-in-law, which includes financial support for his nursing home care, preclude a finding that their relationship is “so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.” This is true even if it is Applicant’s wife that has the primary bond with her father, not Applicant himself.

Applicant and his wife maintain accounts at a Russian bank, through which they both receive monthly benefits from the Russian government. Those benefits, akin to U.S. social security payments, have little financial value, especially compared to Applicant’s significant U.S. assets, which include a home valued in the mid-six figures, and a six-figure income. They continue to own their apartment in Russia. Its value is unclear, but it’s small size (about 300 square feet, or less) does not suggest a high monetary value. AG ¶ 8(f) therefore has some application, when the family’s Russian financial assets are balanced against their more significant assets in the United States. However, the fact that they maintain financial assets in Russia, and use those assets (his wife’s benefits, at least) to provide support for her father-in-law, means those assets are not insignificant to them, no matter their comparison to their domestic U.S. financial assets. Further, the fact that they have ongoing financial connections to the Russian government simply cannot be ignored as an avenue of potential exertion of influence, manipulation, or pressure upon them by Russian authorities. AG ¶ 8(f) therefore does not apply.

Given his ongoing family and financial connections to Russia and its government, Applicant has not met his heavy burden of persuasion of establishing that the foreign influence security concerns are mitigated.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about an individual's personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;
- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

SOR ¶ 2.a reads: “You have a dual allegiance between the U.S. and Russia.” Applicant admitted the allegation, with an explanation. This dual allegiance was alleged under Guideline E (personal conduct) and not Guideline B (foreign influence).

During closing argument, Department Counsel argued for application of either AG ¶¶ 16(c), 16(d), or both, under the theory that Applicant’s dual allegiance constituted credible adverse information that is not explicitly covered under any other guideline, but which is nonetheless disqualifying. Department Counsel argued that the Guideline B security concern is focused on an applicant’s potential to be subjected to possible foreign influence through their connections to a foreign country (such as family members or financial interests), and not through an applicant’s own sentiments, so the case is best made under Guideline E instead. (Tr. 186-187, 191-193)

However, the first sentence of the general concern of Guideline B specifically refers to divided allegiance: “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) (Emphasis added). I conclude that this specific reference to “divided allegiance” under Guideline B precludes a finding that such a sentiment, even if established, constitutes disqualifying conduct under AG ¶¶ 16(c) or 16(d), precisely because it is “explicitly covered” under Guideline B. Therefore, SOR ¶ 2.a is found for Applicant. However, whether alleged under Guideline B or not, Applicant’s dual allegiances are sufficiently established in the record, not only because of his own interview statements, but also because of his family and financial connections to Russia, as fully addressed under Guideline B, above.

This leaves the two falsification allegations, SOR ¶¶ 2.b and 2.c, both of which Applicant denied with explanations. This puts the burden on the government to establish the allegations of deliberate falsification.

In considering whether Applicant deliberately failed to disclose either the monthly benefits (to himself and his wife) or the apartment in Russia, I must weigh several factors, including the language of the questions, Applicant's education level and life experience, the fact that English is not his first language, and Applicant's credibility.

Section 20A of Applicant's August 2018 SCA (Foreign Financial Interests – Real Estate) asks "Have you, your spouse, or legally recognized domestic civil union/domestic partner, cohabitant, or dependent children EVER owed, or do you anticipate owning, or plan to purchase real estate in a foreign country?" Applicant answered "No." (GE 1 at 34)

There is no question that Applicant and his wife and family owned an apartment in Russia at the time, and had owned an apartment there for many years. They had been granted a right to live in the apartment when they were still in Russia, and were granted ownership through the privatization process in the mid-1990s. They maintained ownership of the unit after moving to the United States, and they stayed in the apartment on visits back to Russia.

Applicant denied SOR ¶ 2.b, and asserted that he did not lie, and intended to be truthful. He gave several explanations for his answer. He asserted that he misunderstood the question because it was not stated clearly; because he focused on the portion of the question asking about plans to purchase real estate in the future; he stated that he had answered the question correctly since he was receiving no financial benefit or rent from the property at the time and was not able to sell it; and he asserted, incorrectly, that the question asked about property being used for "commercial purposes." I conclude that through these explanations, Applicant either rationalized his negative answer after the fact, or came up with reasons at the time why he did have to disclose it. The text of the question is clear, as is Applicant's long-term ownership of the apartment in Russia. Applicant is also highly intelligent and sophisticated, though English is not his native language. I conclude that AG ¶ 16(a) applies as to Applicant's failure to disclose the apartment on his August 2018 SCA.

Section 20A of Applicant's August 2018 SCA (Foreign Financial Interests – Foreign Benefit) asks "As a U.S. citizen, have you, your spouse, or legally recognized domestic civil union/domestic partner, cohabitant, or dependent children received in the last seven (7) years, or are eligible to receive in the future, any educational, medical, retirement, social welfare, or other such benefit from a foreign country?" SOR ¶ 2.c alleges that Applicant deliberately failed to disclose that he and his wife receive "monthly pensions from Russia." Applicant denied the allegation with an explanation.

Applicant prepared his SCA in August 2018. He turned 60 in May 2018. His wife became eligible to receive monthly government benefits from Russia, in 2013, when she

turned 55. She testified that she began receiving her benefits several years later. It is not clear when this happened, but it may have been after their 2017 trip to Russia. During that trip, Applicant and his wife went to the “pension office” (or government benefit office) in Russia. Applicant said he was told that he might become eligible in the future (when he turned 60) but he was not given specific information. It is possible that they both applied at that time, and that she began receiving her benefits soon thereafter, since she was already eligible. Further, she used her benefits to support her father in Russia, and Applicant knew this.

Applicant’s benefits began in May 2018, after he turned 60, though he may not have known it in August 2018 when he prepared his SCA. He testified that he learned about his monthly benefit payments during his 2019 summer trip to Russia. Yet that trip occurred after his second background interview when he discussed them with the investigating agent, in June 2019. This discrepancy about the timing of when he learned about the benefits undercuts Applicant’s credibility. At his hearing, Applicant acknowledged that he knew in 2017 that he might be eligible for such benefits, when the pension office told him about them. He also said in the interview that he did not disclose the benefits because of the small amount of money involved.

But the question here is whether Applicant deliberately failed to disclose either his, or his wife’s Russian benefits, in August 2018 on his SCA. While Applicant probably should have known to at least report his wife’s benefits, I cannot conclude that his failure to disclose them was deliberate. It is also not clear that he knew that he was also receiving Russian benefits at that time. While based on what the Russian benefit office told him in 2017, he likely knew that such benefits would soon come his way, I cannot conclude that his failure to disclose them was deliberate. As to SOR ¶ 2.c, AG ¶ 16(a) is not established.

Under AG ¶ 17, conditions that could mitigate security concerns in this case include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Falsification of a security clearance application, even once, is a serious matter, and not a minor one. AG ¶ 17(c) therefore only partially applies. However, during his first background interview, Applicant disclosed the matter of the Russian apartment, their receipt of rental income, and his wife’s use of that income to benefit her father in Russia. This is sufficient to apply AG ¶ 17(a). SOR ¶ 2.b, the only established Guideline E allegation, is therefore mitigated.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines, B and E in my whole-person analysis. I also considered Applicant's favorable recommendations from friends and co-workers.

Applicant's wife and three adult children are dual U.S.-Russian citizens, as is Applicant himself. His elderly father-in-law is a citizen and resident of Russia. Applicant and his family continue to own a small apartment in Russia. He and his wife have bank accounts in Russia through which they receive monthly benefits from the Russian government. Applicant's wife uses her benefit to support her elderly father. These are all ongoing foreign influence security concerns.

I note that Applicant did have prior eligibility for both a position of public trust and a security clearance. However, security clearances are not granted in perpetuity. Circumstances change, both for individuals and for nations. Even if Applicant had a security clearance in the past, I cannot ignore the strong evidence of an ongoing, hostile relationship between the United States and Russia, and the Russian government's recent, and ongoing, intelligence efforts against the United States and its interests.

Given the strong heightened risk shown by the Russian government's relationship with the United States and with the Russian people, and Applicant's ongoing connections to both Russia and the Russian government, he did not provide sufficient evidence to mitigate foreign influence security concerns under Guideline B. While the personal conduct allegations under Guideline E are either mitigated or not established. Applicant has not met his burden of showing that the security concerns established by family and financial connections to Russia are mitigated. Overall, the

record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

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, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2: Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge