



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



In the matter of:)
)
) ISCR Case No. 20-00656
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: Luke Rose, Esq.

12/08/2022

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the foreign influence security concerns raised by his domestic partner’s (DP) connections to Russia. Eligibility for access to classified information is denied.

Statement of the Case

On June 11, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). Applicant responded to the SOR on July 16, 2021, and requested a hearing before an administrative judge.

The case was initially assigned to another administrative judge and reassigned to me on May 4, 2022. I convened the hearing as scheduled on May 17, 2022. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. GE 4 (discovery letter, August 5, 2021) and GE 5 (Request for Administrative Notice - the Russian Federation (Russia)) were marked and made part of the record, but they are not substantive evidence. Applicant testified, presented the testimony of his DP, and submitted Applicant’s Exhibits (AE) A through V, which I admitted without objection.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Russia. (GE 5) Without objection, I took administrative notice of the facts contained in the documents as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

Applicant is a 43-year-old employee of a federal contractor. He is an American citizen by birth and comes from a long-line of American citizens. He noted his parents are proud Americans that taught him about the privileges of being an American citizen, and the importance of the rights that we enjoy as American citizens. (Tr. 30) He grew up and was educated in the United States, graduating from college with a double major in 2001.

After college, he held a couple of jobs that allowed him to display his professionalism, skills, and knowledge. A federal contractor hired Applicant in 2007, and he held a position of trust for 10 years. (Tr. 34) A large federal contractor hired him in 2017, and it is currently sponsoring his security clearance. His current income is \$165,000 a year.

The SOR alleges that Applicant's cohabitant is a dual citizen of Russia and the United States who previously held a government job in Russia (SOR ¶ 1.a) and that his in-laws (father, mother, and sister) are citizens and residents of Russia. (SOR ¶¶ 2.b, 2.c, and 2.d). He admitted all of the foreign influence allegations with explanations.

Applicant met his cohabitant and domestic partner (DP) in 2011. She was born in Russia to Russian parents in 1984. She grew up and was educated in Russia, graduating from college in 2005. (Tr. 126) She met her first husband, an American working with a U.S. agency in Moscow, in 2004. They married, and she became pregnant. She entered the United States in 2008 while pregnant so that her daughter could be born in the United States. She received her green card in 2009, and became a naturalized U.S. citizen in 2011. (Tr. 79) Her ex-husband filed for divorce in 2011, which was finalized in 2016. (Tr. 131)

Applicant and his DP started a romantic relationship in January 2012. Since then, he has been providing financial support for her and her child. Applicant and his father visited Russia in June 2012, where they met and stayed with her Russian immediate family during their two-week visit. He has traveled with her to Russia almost every year, including 2013, 2015, 2016, 2017, and 2019. They stayed with her family for about a month on each visit. The purpose of their visits is for his DP to visit with her family and friends. (Tr. 71)

Applicant and his DP are friends with a couple from Kazakhstan who were assigned to Kazakhstan's embassy in the United States. During their visit to Russia in 2016, they travelled to Kazakhstan to visit with their friends who were in their country at the time. She maintains contact with her friends from Kazakhstan via messaging

applications. Her friends are currently assigned to the Kazakhstan embassy in England. (Tr. 119)

Applicant purchased an apartment in 2014 and they moved in together in October 2014. In 2016, they entered into a domestic partnership because he wanted to provide medical insurance to his DP and her daughter. She receives child support from her ex-husband, performs some modeling work, and is developing a small business from their home. Applicant noted that she is very independent and takes pride in being able to provide for herself. He feels that they are in a committed relationship. They have children together, and he intends to continue their relationship like a husband and wife. (Tr. 82)

Applicant and his DP have three children, ages 14, 7, and 6; all of them were born in the United States. The oldest is Applicant's stepdaughter who was born of a prior marriage of his DP with an American. He and his DP have no interest in their children having dual citizenship with Russia or having a Russian passport. She is teaching the children to speak Russian, and they travel to Russia with Applicant and his DP. She has tutors for her children to help them learn the Russian language. (Tr. 47, 118)

Applicant's DP has three savings accounts and a checking account in a Russian bank, and she owns some shares on a Russian bank that she purchased as an investment in 2020. Some of these accounts the DP has held since she began working in Russia. Others she opened to facilitate her transferring money to her family when needed or to pay expenses during their visits to Russia. She uses her bank accounts to pay her children's tutors in Russia.

Applicant and his DP denied having any financial or property interest in Russia. He also denied providing financial assistance to his DP's relatives in Russia, other than buying food and giving small presents during their visits. (Tr. 43) He considers the current political regime in Russia to be extremely disturbing and disappointing. (Tr. 44) He believes he was naive about Russia when he first started visiting. He was not aware of the levels of violence, intimidation, and the lack of protection of human rights that any person, and especially the citizens, have to endure. He believes Russia is an extremely corrupt country, almost like a large organized crime organization where even the judicial system is corrupt. (Tr. 44)

Applicant noted that his DP was the first person that brought to his attention that journalists are routinely threatened, beaten, and murdered in Russia, and that citizens cannot count on having any rights. He agrees with the evidence admitted at his hearing identifying Russia as a hostile country. Russian people who express dissent to be threatened, beaten, jailed and murdered. Russia is engaging in an aggressive war in Ukraine in which many civilians have died. (Tr. 46, 53, 143)

The DP possesses a U.S. passport and a valid Russian passport. She exclusively uses her Russian passport to travel to Russia. She has considered renouncing her Russian citizenship, but she is concerned the Russian government may interfere with her ability to travel to Russia. Visiting her Russian family is very important to her, and she does not want to risk her ability to do so. She is concerned about having to request visas

and not being assured of her right to travel and to be with her family. Her grandmother is 92 years old, and her parents are aging. The DP has a very close-knit, loving, and caring relationship with her Russian family. (Tr. 72) The DP speaks with her mother and her sister daily through the telephone or messaging applications, and she has a close relationship with her father. They speak or communicate with each other at least once a week. (Tr. 73) She asked her family to immigrate to the United States, but his grandmother is too old and her parents are not interested in leaving their relatives in Russia. Russia refuses to honor United States citizenship for any Russian citizens. (Tr. 48, 137)

The Russia government paid for the DP's education. She graduated with a business administration degree. Applicant believes that she has never worked in any capacity for the Russian Federation or the Russian government. She worked for a Middle Eastern country embassy in Moscow in 2005 in an administrative position. From October 2005 to June of 2009, she worked for foreign industry business developing firm in Moscow as a secretary to the assistant to the head of the representative of that office. (Tr. 75 - 77)

The DP is afraid to travel to Russia. She testified she has been quite vocal on social media against the Russian government and against the war in Ukraine. She also protested in the United States in front of a Russian embassy when an opposition leader was imprisoned. (Tr. 158 – 159) She is worried that she will be arrested when she travels to Russia again. She currently does not feel safe about travelling to Russia. (Tr. 137) She testified that for the last 16 years, she has been decrying the political situation in Russia, the numerous human rights violations, the imprisonments and assassinations of journalists, opposition leaders, and political activists. She does not see herself ever wanting to or agreeing to cooperate with or assist the Russian government in any way for any reason, including possible pressure on my family members. (Tr. 148 - 149)

The DP's parents are citizen and residents of Russia. Her mother graduated from a Russian university in 1986. (Tr. 87) Between 1986 and 1987, she worked for an all-Russian scientific research institute of Ukraine lands. (Tr. 87) She receives a Russian government pension of 8,755.00 rubles a year (about \$250 a month), that started in 2012. (Tr. 90, 165) She frequently visited the United States to help the DP with her first child. Both of her parents understand English well, and her mother can speak it at the same level that Applicant can speak Russian. He met his mother-in-law in 2012 when she visited his DP in the US. She visited for six months between August 2014 and February 2015, and stayed with her boyfriend in another state. (Tr. 170) She also visited Applicant and his family from March 2015 to June 2015, from September 2015 to March 2016, in 2017 for about three months, and in 2019 for about five months (Tr. 96 - 99)

Applicant's father-in-law served in the Soviet army from 1979 to 1981, and was transferred to the reserve. He was a graphics designer working for a newspaper, and began collecting his retired pension of about 17,000 rubles (about \$6,000) in 2016. (Tr. 101 – 103)

The DP's sister works in sales in an office supply and furniture store in Russia. She is married and has a child. Her husband works in a book-printing factory in Russia.

(Tr. 106, 182) The DP and her sister have a very close relationship; they have contact with each other every day or at least every other day.

Applicant's references attest to his work ethic, integrity, honesty, ability to work under pressure, and his leadership. His evaluation reports corroborate these personality traits and attributes. His employer and references praised his performance, diligence, trustworthiness, professionalism, and contributions to mission accomplishment. They identify him as a valuable and productive employee. (AE O – S)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, 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 national security eligibility will be resolved in favor of the national security."

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.

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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(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

(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.

Applicant's DP was born and educated in Russia. She is a dual citizen of Russia and the United States; however, Russia does not recognize her U.S. citizenship. Her parents, sister, grandmother, and extended family are residents and citizens of Russia. She has close ties of affection and obligation to her Russian family as demonstrated by her daily communication with her mother and sister, and frequent communication with her father and grandmother, and her frequent visits to her Russian family. Since 2011, she has travelled to Russia to visit her family every year, except for 2009 and 2018; she last travelled to Russia in 2019.

The DP has several bank accounts in Russia and has used them to facilitate travel to Russia, to financially assist her family when needed, and to pay for expenses in Russia. Applicant and their children travel with her to Russia. He has traveled with his DP and the children to Russia almost every year since 2012, including 2013, 2015, 2016, 2017, and 2019. She has considered renouncing her Russian citizenship, but she is concerned the Russian government may interfere with her ability to travel to Russia. Visiting her Russian family is very important to her and she does not wish to risk her ability to do so.

The DP has been quite vocal on social media against the Russian government and against the war in Ukraine. She also protested in the United States in front of a Russian embassy when an opposition leader was imprisoned. She is afraid to travel to Russia and worried that she will be arrested when she travels to Russia. She does not feel safe to travel to Russia. For the last 16 years, she has been decrying the political situation in Russia, the numerous human rights violations, the imprisonments and assassinations of journalists, opposition leaders, and political activists. She does not see herself ever wanting to or agreeing to cooperate with or assist the Russian government in any way for any reason, including possible pressure on her family members.

Applicant has been providing financial support for his DP and her child since 2012. He is committed to their relationship, they have three children together, and he equates his relationship with her to being married. Applicant and his DP have no interest in their children having dual citizenship with Russia or having a Russian passport. He denied having any financial or property interest in Russia. He also denied providing direct financial assistance to his DP's relatives in Russia. He considers the current political regime in Russia to be "extremely disturbing and disappointing". He is aware of the levels of violence, intimidation, and the lack of protection of human rights that any person, and especially the Russian citizens, have to endure. He believes Russia is an extremely corrupt country, almost like a large organized crime organization where even the judicial system is corrupt. He agrees that Russia is hostile to the United States. The unjustified Russian invasion of Ukraine has caused numerous civilian deaths.

The potential for terrorism, crime, and other violence against U.S. interests and citizens remains high in Russia, and it continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; and

(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.

Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding sensitive 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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

I considered the totality of Applicant's ties to Russia. Applicant has extensive physical and verbal contact with his DP and her parents, sister, grandmother, and extended family. He has visited Russia almost every year since 2012, except for 2009 and 2018. He has not visited Russia since 2019.

Applicant's ties to his DP and her Russian family create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion that it is not outweighed by his deep and long-standing relationships and loyalties in the United States. Russia is hostile to the United States and is engaging in a war against Ukraine. It utilizes aggressive espionage practices against the United States, and abuses its own citizens. It is likely Applicant will be placed in a position of having to choose between the interests of the

United States and the interests of his DP or her family in Russia. None of the mitigating conditions are applicable. I find the Guideline B security concerns against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence+

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 have incorporated my comments under Guideline B in my whole-person analysis.

Applicant is a loyal U.S. citizen. He has worked well for federal contractors since 2008. His resume, character letter references, awards, and his performance appraisal establish his excellent performance, diligence, trustworthiness, professionalism, and contributions to mission accomplishment. He received numerous awards from his employer. He is an outstanding employee and citizen. He expressed his undivided allegiance to the United States. He credibly testified that he would do nothing to compromise the safety of the United States or the future of his children in the United States.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In particular, I considered Russia's aggressive use of its intelligence services against the United States, its invasion of other country, and its documented human rights abuses against its people.

The record evidence leaves me with questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the foreign influence security concerns.

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.d:

Against Applicant

Conclusion

It is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge