



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



In the matter of:	)	
	)	
	)	
	)	ISCR Case No. 20-00551
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

10/06/2023

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. His ongoing relationships with internet-based, foreign national sex workers presents an unacceptable security risk. Clearance is denied.

**Statement of the Case**

On April 7, 2021, DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence, sexual behavior, and personal conduct guidelines. The Agency acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Based on the available information, DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge to determine whether to grant or deny his security clearance.

Department Counsel sent Applicant the disclosure letter and proposed exhibits on September 3, 2021, which is included in the record as Hearing Exhibit (HE) I. The hearing convened on January 11, 2023. I admitted as HE II and III, respectively, administrative notice documents pertaining to the Russian Federation and Ukraine. I also admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A and B, without objection from either party. DOHA received the transcript on January 23, 2023.

## **Procedural Issues**

### **SOR Amendment**

Department Counsel moved to amend SOR ¶ 3.b to allege that Applicant was removed from a temporary work assignment in 2011 at the request of a client, not terminated by his employer. Applicant did not object to the amendment and admitted the amended allegation. (Tr. 11-12)

### **Administrative Notice**

The Government provided administrative notice documents regarding the Russian Federation (HE II) and Ukraine (HE III), dated August 31, 2021. These documents do not contain any information regarding Russia's invasion and ongoing military conflict with Ukraine, or the current security concerns in both countries. Accordingly, I have taken administrative notice of facts of these issues as determined by the U.S. State Department, which are included in the record as HE IV (Ukraine) and V (Russia), respectively. I have also taken administrative notice of facts regarding combatting trafficking in persons (TIP), as provided by DOD, which are included in the record as HE VI.

## **Findings of Fact**

Applicant, 61, has worked for his current employer, a federal contracting company, as a technical writer since 2018. He previously held a security clearance from 1982 to 1987. He applied for access to classified information in 2012, but that application was not fully adjudicated because he changed employment and no longer required access. He applied for and was granted public trust eligibility in 2017. Applicant completed his most recent security clearance application in August 2018. He disclosed foreign national family members, his wife's two adult sons as well as her mother, who are citizens and residents of Ukraine – as foreign nationals to whom he has provided financial support. He also disclosed his wife's ownership interest in an apartment in Ukraine. (Tr. 26, 29, 50-52; GE 1-3)

The SOR alleges these relationships as potentially disqualifying under the foreign influence guideline (SOR ¶¶ 1.a – 1.c). Applicant also disclosed multiple relationships with and financial support of internet-based, foreign national sex workers from several countries. These relationships are alleged in the SOR under the foreign influence (SOR ¶¶ 1.d – 1.m), sexual behavior (SOR ¶ 2.a), and personal conduct guidelines (SOR ¶ 3.a). In addition, the SOR also alleges under the personal conduct guideline, that Applicant was removed from a temporary work assignment by his employer at the request of a client company after he made and disseminated a work-related video to coworkers without permission from the client company. (SOR ¶ 3.b)

### **Work-related Misconduct**

In 2011, Applicant was employed by Company A, a temporary staffing agency, and assigned to a technical writing project for Client. During the assignment, he realized that he and other technical writers were having difficulty writing instructions related to troubleshooting a particular device. Without permission from Client, Applicant tested the device to failure and made a video of the test to provide a visual aid to other technical writers on the project. He then shared the video with others on the project, including Client's employees, who reported the video and its distribution. Client requested Applicant's removal from the project. Company A complied with the request but did not terminate Applicant's employment. Company A eventually reassigned him to a project with a different client. There is no evidence that the video was against Client policy, or that it contained proprietary or otherwise sensitive information. Nor is there any evidence that Applicant committed a security violation by making and disseminating the video. (Tr. 71-75; Answer)

### **Familial Relationships with Foreign Nationals**

Applicant's wife, his third, whom he married in 2011, is originally from Ukraine. The United States established diplomatic relationships with Ukraine in 1991 when it gained independence from Russia. The United States attaches great importance to the success of Ukraine as a free and democratic state with a flourishing market economy. U.S. policy is centered on supporting Ukraine in the face of continued Russian aggression as it advances reforms to strengthen democratic institutions, fight corruption, and promote conditions for economic growth and competition. (GE 1; HE IV)

In February 2014, Russia annexed Crimea, claiming the area to be part of the Russian Federation. In September 2022, Russia occupied four more provinces in Ukraine, and in February 2022, Russia launched a full-scale invasion of Ukraine. As a result, the U.S. State Department issued Level 4 – Do not travel warnings, for both countries. In Ukraine U.S. citizens must exercise diligence due to the potential for military attacks, crime, and civil unrest. There are continued reports of Russian forces and their proxies singling out U.S. citizens in Russian-occupied areas of Ukraine for detention, interrogation, or harassment because of their nationality. U.S. citizens have also been singled out when evacuating by land through Russia-occupied territory or to Russia or Belarus. Because of the invasion, U.S. emergency consular services are limited, especially in Russian-occupied areas. (HE IV)

U.S. citizens in Russia face potential for harassment and the singling out for detention by Russian government security officials. U.S. citizens may also face the arbitrary enforcement of local law, limited flights into and out of Russia, as well as the possibility of terrorism. The U.S. Embassy in Russia also has limited ability to assist U.S. citizens in emergency situations. Due to sanctions imposed on Russia by the United States, U.S. credit and debit cards will not work in Russia and funds transferred from U.S. banking institutions may not be accessible by Russian banks, creating the potential for financial difficulty for U.S. citizens in Russia. Dual U.S. and Russian citizens face additional risks, including Russia's refusal to acknowledge dual nationals' U.S. citizenship, denying their access to U.S. consular assistance, subjecting them to mobilization, preventing their departure from Russia, and possibly conscripting them into military service. (HE V)

Applicant's wife became a naturalized U.S. citizen in 2016. Her mother and two adult sons are citizens and residents of Ukraine. Applicant did not disclose his wife's sons on his 2012 security clearance application. He disclosed them on the 2018 security clearance application only as foreign nationals to whom he has provided financial support. He did not disclose them as relatives or other foreign nationals to whom he is bound to by affection, influence, common interests, or obligation. (Tr. 32; GE 1, 3)

Applicant has limited contact with his wife's sons and his mother-in-law. The younger son is married with one child. He is currently serving in the Ukrainian military. Applicant occasionally sends the son's wife between \$50 and \$100 in financial support. The older son resides in an apartment that he owns jointly with Applicant's wife. Applicant does not consider himself to have any interest in the apartment, which he believes will pass directly to her son upon her death. Neither Applicant nor his wife consider it part of their assets or rely on it for their financial maintenance. Applicant sends him \$50 each year on his birthday. On his 2018 security clearance application, Applicant disclosed that he had provided each son a total of \$2,000 each in financial support over the course of their acquaintance. Applicant's mother-in-law is in her mid-nineties. She continues to live on her own, with assistance from Applicant's brother-in-law. Applicant believes that he has contributed \$300 to her care over the last year. (Tr. 32-36)

### **Intimate Relationships with Foreign National Sex Workers**

Applicant began interacting with foreign national sex workers through adult entertainment internet sites, some of which were Russian based, after the death of his second wife in 2009. Initially, he interacted with women from Russia, Ukraine, Latvia. In exchange for tips from Applicant, the women engaged in conversation and performed sex acts for him to watch. As he established a level of closeness with the women, their communication moved to encrypted communication platforms such as What's App and Skype. He continued these relationships online and in person after marrying his current wife in 2011. (Tr. 36-41, 47)

On his 2012 security clearance application, in response to Section 19 – Foreign Contacts, Applicant disclosed two sex workers that he considered himself bound by affection, influence, common interests, or obligation. In response to the same question on his August 2018 security clearance application, Applicant disclosed relationships with eight sex workers. Five of the women were Russian citizens, one was from Latvia, one from Syria, and one from Romania. He also disclosed providing over \$32,000 in financial support to 11 foreign national sex workers, including over \$14,000 to seven women he had never met. At the hearing, he estimated that he has provided at least \$50,000 in financial support to these women between 2009 and 2018. (Tr. 30, 42; GE 1, 3)

Applicant has visited two sex workers based in Russia and Ukraine. He paid for at least two women to travel to the United States and other international cities. He admits to buying gifts for these women, to include electronics, cosmetics, and clothing. He funds these relationships with the survivor's benefits, approximately \$39,000 annually, he received after his second wife died in 2009. He discussed these foreign national contacts in October 2012 and December 2018 background interviews. At the hearing, Applicant admitted that as he was being investigated in 2018, he considered the possibility that these relationships not only represented a potential security risk but could also put his employment in jeopardy. Ultimately, he decided to continue the relationships because he had disclosed them to the Government and they were therefore out in the open. (Tr. 52-53; GE 4-5; Answer)

At the hearing, Applicant spoke of three incidents worth highlighting. In 2011, Applicant traveled to Russia to visit a woman with whom he had fallen in love. He believed she reciprocated those feelings. However, when he arrived in Russia, she refused to see him without explanation. In another instance, Applicant loaned \$3,000 to a Russian sex worker to start a business. He testified that when the business didn't "transpire," he forgave the loan. It is unclear what he meant by "transpire," whether the business failed or if the money was used for another purpose. He admits sending another Russian sex worker \$400 every two weeks for two years as financial support, as she pursued a case through the Russian court system over a real estate deal. In 2016, Applicant paid for the same woman who he attempted to visit in Russia in 2011, to visit him in the United States. He paid the travel expenses for the woman and her male companion, who accompanied her on each of the three outings Applicant had with her. Applicant testified that he was not sure of the relationship between the woman and her companion but assumed that he was her romantic partner. (Tr. 41-43)

Applicant stopped engaging with Russian sex workers, citing his growing displeasure with Russia's political position and ultimate invasion of Ukraine in February 2022. He still provides occasional financial support to two women in Ukraine. He sent one woman money to help her flee the country. He sends money to another woman living in Dnipro, a heavily embattled area of Ukraine, just to help. In 2017, at the suggestion of a coworker that he might like women from Colombia, he began soliciting sex workers based in that country. At the time of the hearing, Applicant admitted to having ongoing relationships with at least six Colombian sex workers. He estimates that he has provided \$10,000 in financial support to sex workers based in Colombia. He is

currently learning Spanish to facilitate his communication with the women. (Tr. 46, 48, 54-58, 57-58, 63)

Applicant testified that his wife knows about but does not condone his relationships with internet sex workers or the money he spends on them. He has told her that because the money is not marital property, he will continue to spend it as he chooses. At the hearing, he stated his intention to continue pursuing intimate relationships with internet-based, foreign national sex workers and providing them financial support (Tr. 63):

Regarding all these activities, I will simply say that they give me a joy that I have not previously known in my life[,] and I do not apologize for them.  
(Tr. 19)

### **Policies**

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(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.

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**

### **The Alleged Work-Related Misconduct does not Present a Disqualifying Security Concern.**

The SOR alleges and Applicant admits that in 2011, while staffed on a temporary technical writing job, he made a video recording of a test of a client’s device and disseminated that video to others working on the project, without permission from the client. 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 information. (AG ¶ 15) While Applicant’s actions may have been ill advised, there is no evidence that he shared proprietary or sensitive information, or that he violated a written policy. His employer resolved the matter as a human resources issue. There is no evidence that either the employer or the client treated the incident as a security violation. Furthermore, the incident is an isolated event that occurred more than ten years ago. The incident does not constitute a security concern and is resolved in favor of the Applicant.

### **Applicant Mitigated the Security Concerns Raised by his Familial Relationships with Residents and Citizens of Ukraine.**

[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. interests or otherwise made vulnerable to pressure and coercion by any foreign interest.” (AG ¶ 6) An assessment of foreign contacts and interests should consider the country in which the foreign interest is 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. (Id.) Given the geopolitical situation in Russian and Ukraine and the level of danger posed to U.S. citizens and interests in both countries, the following disqualifying condition applies:

Foreign Influence Disqualifying Condition AG ¶ 7(a): contact, regardless of method with a foreign...friend, or other person who is a citizen of resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.

However, the record contains sufficient evidence to mitigate concerns raised by any potential conflict of interests where Applicant's in-laws are concerned. Applicant does not have an independent relationship with his wife's sons or her mother. The amounts of financial support he has provided to them are minimal and represent a courtesy, not evidence of familial obligation or affection toward them. Furthermore, the record does not support a finding that bonds of obligation can be attributed to him through his relationship with his wife.

While it is possible that his wife's son's and her mother could be subject to exploitation by the Russian or the Ukrainian governments or other entities operating in Ukraine, I find it unlikely that any such pressure would cause Applicant to compromise U.S. interests. Given that Applicant has continued to disregard his wife's feelings about his extra-marital relationships with sex workers and the financial resources he pours into them, it is unlikely that he would be swayed to resolve a conflict of interest in her favor, let alone those of her Ukrainian family members. Furthermore, there is no foreign influence created by the ownership interest Applicant's wife holds in an apartment in Ukraine. Applicant does not consider himself to have any interest in the property. Nor are he and his wife reliant on the property to maintain their financial position. The following mitigating conditions apply:

Foreign Influence Mitigating Condition AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty to obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep ties 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. interests;

Foreign Influence Mitigating Condition AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Foreign Influence Mitigating Condition AG ¶ 8(f): the value or routine nature of the foreign business, financial, or property interest is such that they are unlikely to result in conflict and could not be used effectively to influence, manipulate, or pressure the individual.

**Applicant's Intimate Relationships with Foreign National Sex Workers Presents an Unacceptable Security Risk and are Disqualifying under the Personal Conduct, Sexual Behavior, and Foreign Influence Guidelines.**

An individual's personal conduct and their sexual behavior, which includes conduct occurring in person or via audio, visual, electronic, or written transmission (AG ¶ 12), becomes a security concern when it reflects a lack of judgment, or may subject the individual to undue influence of coercion, exploitation, or duress. Conduct alleged under these guidelines, together or individually, may raise questions about an



individual's judgment, reliability, trustworthiness, and ability to protect classified information. (See AG ¶ 12 and AG ¶ 15).

Since at least 2009, Applicant has used internet sites to engage in sex acts and relationships with foreign national sex workers. Some of these sites are based in Russia and other countries outside of the United States. Applicant believes that the women are engaged in sex work and have entered into relationships with him entirely by their own choosing. He believes that the money and gifts he has sent to these women over the years are used solely at their discretion. He also assumes that any information he has provided to these women over the course of their relationships were being held in confidence. However, he cannot know for certain. The existence of these relationships and his personal information are a potential source of exploitation. Also of concern is that Applicant seems unaware that these relationships have indicators of human trafficking. (HE VI) Applicant's financial support could be used in unwitting support of a criminal enterprise. Accordingly, the following disqualifying conditions apply:

Personal Conduct Disqualifying Condition AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) Engaging in activities which, if known, could affect the person's personal, professional, or community standing;
- (2) While in another country, engaging in any activity that is illegal in that country;
- (3) While in another country, engaging in any that, while legal there, is illegal in the United States;

Sexual Behavior Disqualifying Condition AG ¶ 13(c): sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

None of the mitigating conditions under the personal conduct or sexual behavior guidelines apply. Applicant intends to continue to pursue and cultivate relationships with internet-based sex workers in the future. Neither the personal conduct nor sexual behavior concerns are mitigated by Applicant's full and candid disclosures to the Government or his wife. Because these relationships are ongoing and exclusively with foreign nationals, the potential for exploitation by a foreign entity remains an issue, which also raises concerns under the foreign influence guideline.

Applicant's relationships with foreign national sex workers could create circumstances in which he 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 (AG ¶ 6), specifically:

Foreign Influence Disqualifying Condition AG ¶ 7(a): contact, regardless of method with a foreign...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.

This case is atypical in that the location of the sex workers, while relevant, is not the primary concern. Applicant has not demonstrated affinity or preference toward any particular foreign country; however, the inherent personal vulnerability in these relationships presents a heightened risk of exploitation from any number of foreign entities, governmental and criminal. These relationships are not casual. Applicant's sense of obligation in these relationships is not minimal. His financial investment in these relationships is significant. These relationships are intentional and maintained over the objection of his wife. He affirmatively decided to maintain them even after considering the possibility that doing so raised a security concern and could jeopardize his employment. The conflict of interest raised by these relationships is not just limited to Applicant having to choose between his sense of obligation to these women, and his relationships and loyalties to the United States, but also protecting his self-interests and the potentially negative impact on his personal and professional reputation if the extent of these relationships were widely known. Accordingly, the foreign influence concerns raised by these relationships are not mitigated.

### **Whole Person Concept**

Based on the record, I have significant reservations about Applicant's current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Although Applicant has been candid with the Government about his relationships with foreign national, internet-based sex workers, it is not sufficient to mitigate the security concerns raised by these relationships. Despite being aware of the Government's concerns since at least 2012, Applicant has decided to continue to maintain his current relationships and initiate new ones. He intends to continue paying for sex acts from these women as well as providing them financial support and gifts outside of their internet platforms. While Applicant is willing to accept the risks associated with these relationships, the Government is not. Accordingly, the security concerns in this case must be resolved in favor of protecting the national interest.

### **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.c:	For Applicant
Subparagraphs 1.d – 1.m:	Against Applicant

Paragraph 2, Sexual Behavior	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Paragraph 3, Personal Conduct	AGAINST APPLICANT

**Formal Findings (Continued)**

Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant

**Conclusion**

In light of all of the circumstances presented in this case, it is not clearly consistent with the national interest to grant Applicant's security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge