



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



In the matter of:)
)
XXXXXXXXXX) ISCR Case No. 23-01145
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 23, 2022. On June 27, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DCSA CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on June 30, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on August 3, 2023. On August 4, 2023, a complete copy of the file of relevant

material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The FORM consists of Items 1 through 6 and HX I. FORM Items 1 and 2 are the pleadings. FORM Items 3 through 6 are the evidence in the case, and I have admitted them without objection. Applicant received the FORM on August 11, 2023, and did not respond. The case was assigned to me on November 9, 2023.

Evidentiary Issue

The FORM included a summary of a personal subject interview conducted on April 12, 2022. The summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summary; make any corrections, additions, deletions or updates; or object to consideration of the summary on the ground that it was not authenticated. Applicant did not respond to the FORM. I conclude that he waived any objections to the summary by failing to respond to the FORM. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Russia. The request and supporting documents are attached to the record as Hearing Exhibit (HX) I. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, he admitted the single allegation in the SOR. His admission is incorporated in my findings of fact.

Applicant is a 32-year-old scientific technician, employed by a defense contractor since May 2020. He received a bachelor's degree in June 2014, a master's degree in August 2019, and a doctorate in May 2021, all from the same university in the United States. He is employed as the director of experimental testing at the university where he received his education. He has never married and has no children.

In Applicant's SCA (FORM Item 3), he reported that he had never previously undergone a background investigation or applied for a security clearance. He disclosed eight foreign nationals with whom he has continuing contact, including a Russian national who was his academic advisor for his doctoral education. He explained that there were many foreign nationals in graduate school, and that he listed in his SCA only those with whom he was in contact for extended periods or who are currently active friends.

Applicant stated that his advisor for part of his doctoral work was a Russian citizen. He continues to work with his former advisor on a regular basis, because his current

employer collaborates on research projects with his former advisor's research group at the university where Applicant received his doctorate. He stated that his relationship with his former advisor is professional and personal. He explained, "He is a mentor which is more than just professional."

Applicant also explained that his former advisor "has always been a researcher and some of that may have been involved or affiliated with [the] Russian/Soviet government or defense since he spent his whole life in Russia until roughly 2013." (FORM Item 3 at 33-35) His former advisor's biography reflects that he received a doctorate in 1990 and a senior doctorate in 2006 from Russian institutions. He worked in educational institutions in Russia and was a department head at one of the institutions. He is concurrently a professor at a Russian university. (FORM Item 4; FORM Item 5)

Applicant was the co-author of a few papers that his former advisor presented at international conferences. (FORM Item 41) His former advisor told him that he could obtain a post-doctorate position for him at a European university, because he had spent most of his career in Europe and had connections. (FORM Item 3 at 40)

When Applicant was interviewed by a security investigator in April 2022, he told the investigator that he believed his mentor was a dual U.S.-Russian citizen, but he was not sure. He also believed that his former advisor had worked on projects with the U.S. Air Force while he was in Russia, but he was unfamiliar with the details. (FORM Item 6 at 2-3)

The Russian Federation has a highly centralized, authoritarian political system dominated by President Putin. The bicameral federal assembly consists of a directly-elected lower house and an appointed upper house, both of which lack independence from the executive. The 2018 presidential election and the 2021 lower house elections were marked by accusations of government interference and manipulation of the electoral process, including the exclusion of meaningful opposition candidates. The Russian government uses arbitrary designations, criminal convictions, and administrative barriers to disqualify potential opposition candidates, ensuring that no independent voices can participate in government processes.

In response to the 2014 Russian violation of Ukraine's sovereignty and territorial integrity, the United States suspended the Bilateral Presidential Commission, a body jointly founded in 2009 by the United States and Russian to promote cooperation between the two countries. Russia has attempted to position itself as a competitor to the United States by undermining norms within the existing international system, aiming to undermine core institutions of the West, such as the North Atlantic Treaty Organization (NATO) and the European Union, and to weaken faith in the democratic and free-market system.

Russia is one of the top three most aggressive and capable collectors of economic information and technological intelligence from U.S. sources. Russia provides military and missile technologies to countries of security concern, including China, Iran, Syria, and

Venezuela. Russian military programs continue to be driven by the perception that the United States and NATO are its principal strategic challenges and greatest potential threat.

Russia uses cyber operations as an instrument of intelligence collection, using sophisticated and large-scale hacking to collect sensitive information, influence the political process in the United States, and undermine Euro-Atlantic unity. Russia also uses commercial and academic enterprises that interact with the West, recruitment of Russian immigrants with advanced technical skills, and penetration of public and private enterprises to obtain sensitive technical information. The areas of highest interest include alternative energy, biotechnology, defense technology, environmental protection, high-end manufacturing, and information and communications technology. Russian agents have been involved in intrusions and hacking affecting U.S. citizens, corporate entities, international organizations, and political organizations in the United States.

Relations between the United States and Russia have deteriorated significantly since Russia's invasion of Ukraine. The United States has imposed sanctions on senior members of the Russian government and has imposed restrictions on the Russian financial system and its defense, aerospace, maritime, and other strategic sections of its government. The U.S. Department of State has issued a Level 4 Travel Advisory for Russian ("do not travel") because of the invasion of Ukraine and the potential for harassment of U.S. citizens, including dual U.S. Russian nationals.

In February 2022, the Office of the Director of National Intelligence (ODNI) reported that Russia presents one of the most serious foreign influence threats to the United States, using its intelligence services, proxies, and other influence tools to undermine U.S. global standing, amplify discord inside the United States, and influence U.S. voters and decision making. Russia has conducted influence operations against U.S. elections for decades, including as recently as the 2020 presidential election.

ODNI also reported that Russia considers cyber disruptions as a foreign policy lever to shape other countries' decisions, as well as a deterrence and military tool. Russia uses commercial and academic enterprises that interact with the West, recruits Russian immigrants with advanced technical skills, and attempts to penetrate public and private enterprises.

Russia's human rights record is uneven, and in some areas it is poor. The judiciary is not independent and is subject to manipulation by political authorities. Abuses include attacks on journalists, physical abuse by law enforcement officers, harsh prison conditions, arbitrary detention, politically motivated imprisonment, electronic surveillance without judicial permission, warrantless searches of residences and other premises, and widespread corruption in the executive, legislative, and judicial branches.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

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

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in living under a foreign government. See ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). It is not a high standard. See ISCR Case No.17-03026 at 5 (App. Bd. Jan. 16, 2019). It is a level of risk one step above a State Department Level 1 travel advisory (“exercise normal precaution”) and equivalent to the Level 2 advisory (“exercise increased caution”)

An Applicant’s ties to persons of high rank in a foreign government or military are of particular concern, insofar as it is foreseeable that through an association with such persons an applicant could come to the attention of those interested in acquiring U.S. protected information. See ISCR Case No. 08-10025 at 2 and 4 (App. Bd. Nov. 3, 2009); ISCR Case No.11-04980 at 2 and 6 (App. Bd. Sep. 21,2012); and ISCR Case No. 11-12632 at 2 and 5 (App. Bd. Feb. 2, 2015). An applicant with ties to a country that is hostile to the United States has a very heavy burden of persuasion to show that he or she is not subject to influence by that country. ISCR Case No. 11-01888 (App. Bd. Jun. 1, 2012).

The following disqualifying conditions are relevant:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Both disqualifying conditions are established. In Applicant's SCA, he described his relationship with his mentor as "more than just professional." He has co-authored articles with his former mentor. His former mentor has held senior positions in the Russian government. Applicant is a neophyte in the world of classified information and may not recognize subtle efforts to obtain information from him.

The following mitigating conditions are potentially applicable:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

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

AG ¶ 8(a) is not established. Applicant continues to have contact with his mentor, who has strong ties to Russia, a hostile country.

AG ¶ 8(b) is not established. Applicant has strong ties to the United States, but he has deep trust and feelings of respect and friendship with his mentor. He is inexperienced in handling sensitive information, and may not recognize subtle attempts to gain protected

information. He has not carried his heavy burden of persuasion to show that he will recognize a conflict of interest and resolve it in favor of the United States.

AG ¶ 8(c) is not established. Applicant's contacts with his mentor are neither casual nor infrequent. He has acknowledged that their relationship is more than just professional.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

I have incorporated my comments under Guideline B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his continued contacts with a Russian national.

Formal Findings

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

Paragraph 1, Guideline B, Foreign Influence:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge