



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



In the matter of:)
)
) ADP Case No. 22-01485
)
Applicant for Public Trust Position)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

03/25/2024

Decision

TUIDER, Robert, Administrative Judge:

Applicant did not mitigate public trust concerns relating to Guideline B (foreign influence). Eligibility for access to a public trust position is denied.

Statement of the Case

On April 4, 2022, Applicant completed and signed a Questionnaire for National Security Positions (SF-86). On October 24, 2022, the Defense Counterintelligence and Security Agency, Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue eligibility to hold a public trust position for Applicant and recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked. Specifically, the SOR set forth trustworthiness concerns arising under Guideline B.

On November 16, 2022, Applicant responded to the SOR, and requested a hearing. On February 8, 2023, Department Counsel was ready to proceed. On February 13, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On February 16, 2023, DOHA issued a notice scheduling the hearing for March 21, 2023. The hearing was convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 and 2, which I received into evidence. Applicant testified and offered Applicant Exhibits (AE) A through G, which I received into evidence. On March 29, 2023, DOHA received the hearing transcript (Tr.).

Administrative Notice

Department Counsel requested administrative notice concerning Belarus, Russia, and Kyrgyzstan. Applicant did not object to Department Counsel's request for administrative notice. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ADP proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). I granted Department Counsel's request for administrative notice concerning Belarus, Russia, and Kyrgyzstan contained in Administrative Notice (AN) Exhibits I, II, and III.

The facts are summarized in the written requests and will not be repeated verbatim in this decision. The Office of the Director of National Intelligence reported that Russia presents one of the most serious foreign influence threats to the United States, using its intelligence services, proxies, and wide-ranging influence tools to try to divide Western alliances, and increase its sway around the world, while attempting to undermine U.S. global standing, amplify discord inside the United States, and influence U.S. voters and decisions making. On September 21, 2022, the Russian government began a mobilization of its citizens to the armed forces in support of its invasion of Ukraine. Russia may refuse to acknowledge dual nationals' U.S. citizenship, deny their access to U.S. consular assistance, prevent their departure from Russia, and conscript dual nationals for military service. It also has human rights problems, and it has been victimized by terrorism.

Belarus has retained closer political and economic ties to Russia than has any of the other Soviet republics. Continuing concerns for Kyrgyzstan include the trajectory of democratization, endemic corruption, a history of tense, and at times violent, interethnic relations, border security vulnerabilities, and potential terrorist threats. See AN Exhibits I through III for further details describing U.S. concerns pertaining to these three countries, especially with regard to Russia.

Where appropriate, I have taken administrative notice of updated and current information from the State Department website regarding the current geopolitical situation, 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.”) In this regard, I note in particular that Russia’s war in Ukraine is ongoing as of this writing.

Findings of Fact

In Applicant’s SOR response, he admitted the allegations in SOR ¶¶ 1.a and 1.b. Applicant’s admissions are accepted as findings of fact.

Applicant is a 41-year-old senior systems administrator who has been employed by a defense contractor since February 2022. He seeks a public trust position, which is a requirement “[t]o perform [his] duties.” (Tr. 15-16) He was born, raised, and educated in the Union of Soviet Socialist Republics (USSR), which broke up into several independent countries, of which Russia is one as are Belarus and Ukraine. (Tr. 16; GE 1) He immigrated to the United States in May 2016 along with his Russian-born wife, who he married in Russia in 2007, and their 13-year-old daughter. They were allowed to enter the United States after his wife won the “Green Card Lottery,” formally known as the Diversity Immigrant Visa Program, in 2015. A winner of the “Green Card Lottery” was allowed to immigrate to the United States and sponsor their entire family. At the time Applicant immigrated to the United States, he was 34 years old. (Tr. 16-18, 55)

Applicant described his motivation to move to the United States as “a great chance.” One of the main reasons he wanted to move to the United States was to provide a better education and future for his children. (Tr. 55) Before moving to the United States, Applicant and his wife “sold almost everything [they] had there to come here.” They have no real or personal property or financial interests in Russia. They had a condominium that they gave to his mother-in-law, where she lives today. (Tr. 55-57) Before moving to the United States, Applicant worked in the information technology field. He did not serve in the Russian military, nor did he work for the Russian government. (Tr. 67-68)

Applicant and his wife have two children, their Russian-born 13-year-old daughter, and their six-year-old U.S.-born daughter. Applicant’s wife is not employed outside the home. (Tr. 18-19, 70; GE 1)

Applicant and his wife became naturalized U.S. citizens in November 2021. His 13-year-old daughter became a naturalized U.S. citizen shortly afterwards, and his six-year-old daughter is a U.S. citizen by birth. (Tr. 19-21, 71; GE 1) Applicant was issued a U.S. passport in February 2022 that expires in February 2032. He also holds a Russian passport issued to him in August 2015 that expires in August 2025. (Tr. 21-22) Applicant’s wife also has a Russian passport as well as a U.S. passport. His oldest daughter only has a Russian passport. Neither daughter has a U.S. passport because there is no current need for them to have one. (Tr. 22-23) Applicant’s youngest daughter acquired Russian citizenship from her parents; however, Applicant has not taken any steps towards having her Russian citizenship formally recognized by the Russian government. (Tr. 71-72)

As noted, Applicant was educated in Russia. He was awarded a Bachelor of Science Degree in Physics in May 2003, and a Master’s Degree in Physics in May 2005.

He was awarded a Master of Science in Information Degree from a U.S. university in May 2022. (Tr. 23-25, 58-59; GE 1; AE E) Applicant and his family chose to settle in their present U.S. location because his wife has Russian relatives already living nearby. Those relatives helped them with their transition to living in the United States. The two families enjoy a close relationship. (Tr. 25-26, 72-74)

Applicant's annual salary is \$128,750. (Tr. 28) He owns a condominium currently valued at \$395,000 that he purchased in July 2020. His monthly mortgage payment, which includes association and related fees, is \$2,400. He has two cars, a 2022 that he owns and a leased 2021. (Tr. 27-31) At the time of his hearing, he had checking, saving, and retirement accounts with approximate balances of \$1,000, \$500, and \$50,000, respectively. He also owns a "cheap" lot of undeveloped land. (Tr. 31-33)

Foreign Influence Connections

Applicant has a mother, two brothers, a sister, and a mother-in-law, who are citizens and residents of Russia. (SOR ¶ 1.a; Tr. 33) Applicant's connections with each relative are discussed below.

Mother (and deceased father) - Applicant's mother is a 69-year-old retired designer in poor health. (Applicant's father retired from the Soviet Navy and passed away in 1998 when Applicant was a teenager. Applicant and the rest of the family lived separate and apart from his father since he was ten years old. Applicant only remembers his father as a retiree.) (Tr. 34-37; GE 1)

Applicant has not had any meaningful communication with his mother since 2007, following a conflict that developed around the time of his wedding. One of the sources of conflict between Applicant and his mother was her unwillingness to care for his daughter when he lived in Russia. The last time Applicant saw his mother was in 2016 at a family get together before Applicant and his family left for the United States. Applicant has not spoken to his mother since then. He does not have her contact information and if he wanted to speak to her, he would use one of his siblings as an intermediary. (Tr. 46-48, 60-62)

Brother #1 - Applicant has a 41-year-old brother who is about a year younger than he is. Brother # 1 is employed as a software engineer in Russia. His brother is married and has two children. His wife, Applicant's sister-in-law, "was an engineer for some kind of appliance company or something, but I never really asked about it." (Tr. 37-40; GE 1) Applicant last saw his brother in 2016 before he left Russia. (Tr. 39) He does not communicate with his brother frequently, adding "I would say once a year on (his) birthday" by Skype, with his most recent communication being in March 2023. He avoided discussing any political topics with his brother such as the war between Russia and the Ukraine. (Tr.39-41, 62-63)

Brother #2 - Applicant's other brother is 38 years old and is a university mathematics professor. He is married and has two children. His wife, Applicant's sister-in-law, is "doing a lot of different things like she's doing . . . parachute jumps and other

things” Applicant added “But I don’t really know what’s her employment.” (Tr. 42-43; GE 1) Applicant communicates with this brother “[o]nce a year” when “something specific happens.” In Applicant’s April 25, 2022 Office of Personnel Management (OPM) interview, he stated that his last communication with this brother was in June 2021. During his testimony he was unsure whether he had communicated with him since then. (Tr. 43-44, 64; GE 2)

Sister - Applicant has a sister who is 35 years old and “works for some health and safety office . . . [s]omething like an office manager” for the local county administration. She is married and has one child. Applicant stated that he has no idea what his brother-in-law does for a living adding that “I saw him maybe five times in all my life.” (Tr. 44-46; GE 1) Applicant communicates with his sister more than his brothers by Skype messenger “maybe one in six month(s).” In Applicant’s OPM interview, he stated that he last communicated with her in January 2022. During his testimony, he stated that he and his sister have communicated more frequently since then given the fact that she is on maternity leave. During those communications, they limit their topics to updates on the family. (Tr. 46-48, 64-65; GE 2)

Mother-in-Law - Applicant’s mother-in-law is a 64-year-old receptionist, who worked for “some kind of private company” in “an office.” Applicant stated that his mother-in-law is “a great grandmother” who provided “a lot” of care for his oldest daughter when they lived in Russia. His wife communicates frequently with her by Skype or Viber software “something like once a month . . . [s]ometimes it’s more often . . . [s]ometimes it’s less.” However, that communication became less frequent recently after “she got a boyfriend.” Applicant described his relationship with his mother-in-law as “good” and added that she is involved with his children’s lives. (Tr. 48-50)

His mother-in-law is Applicant’s only relative who has visited his family since they moved to the United States. She has visited the United States four times since Applicant and his family moved here. Her most recent visit occurred before the COVID-19 pandemic. However, she has not visited Applicant’s family since “all this political layout changed,” which I interpret to mean Russia’s ongoing war in Ukraine. Applicant stated that his mother-in-law is the only person in Russia that he has “close communication with” even before his wedding. He described her as “a good family member.” (Tr. 50-51, 65-66)

Applicant has a father-in-law, who is a citizen of Belarus and resident of Kyrgyzstan. (SOR ¶ 1.a) Applicant’s connections to this relative are discussed below.

Father-in-Law – Applicant’s mother-in-law and father-in-law divorced when Applicant’s wife was four years old and his father-in-law “abandoned any relations” with his former spouse and children. Applicant’s wife and her father did not communicate until she was “like 16 years old.” His wife was able to contact him “through some relatives.” (Tr. 52) Before Applicant and his family moved to the United States in 2016, they invited his father-in-law to visit them in Russia. That was the only time Applicant ever saw his father-in-law in person. Applicant described his father-in-law, “He’s not a bad person, but it was the only episode of our communication.” (Tr. 53) Applicant has not communicated

with his father-in-law since 2016, but he believes his wife communicated with her father in 2023. (Tr. 65)

Applicant's father-in-law is retired. He stated, "As far as I know, I – I believe he was a military as well to the USSR." (Tr. 53) After Applicant's father-in-law retired from the military, he moved to Belarus "for a while and he was trying to do any kind of, you know, work to get food. But it wasn't really successful." His father-in-law has since remarried and he and his wife "moved to Kyrgyzstan because her relatives lives [sic] there, like her mother lives [in] Kyrgyzstan. So they moved to her mother's house right now." (Tr. 54) Applicant has never been to Belarus or Kyrgyzstan, and he has no desire to go to either country. Applicant stated he "never crossed the boundaries of Russia before moving to the United States." (Tr. 54) Regarding future travel to Russia, Applicant stated:

Personally, I'm prohibited (from traveling to Russia). I don't want to go to Russia and even – I didn't want to go to Russia before this war happened. . . . Because in general, I – I'm afraid of Russia. They can change the law upon their consideration any time. I mean, every single person can do that in the law enforcement. And if I will get stuck there, I will lose everything here. That makes me scared. . . . Russia's supposed to change drastically to make the travel there. (Tr. 51)

Applicant stated that he would consider traveling at some point to an intermediate European country such as Germany, presumably to visit a relative. (Tr. 51-52) He added, "I'm just super scared about my safety and the (well-being) of my family." (Tr. 52) Applicant discussed a Russian friend who lives near him in the United States, who received a message at his previous Russian address wherein he was called up for military service. Applicant suspects that if he travelled to Russia, it would signal the Russian authorities that he was in the country and he would be called up for military service. He wants to avoid any problems entering or leaving Russia. (Tr. 68-69)

Applicant and his wife are registered to vote in the United States and intend to exercise their right to vote in upcoming elections. (Tr. 57) Applicant said he has left Russia behind and plans to live out his new life in the United States. (Tr. 57-58) He stated:

"In Russia, laws, they don't really work. And I come here to obey the laws. I really enjoy (that there are) . . . rules that . . . work for me. And that counts to every part of my life – how I'm driving, how I'm doing papers, how I'm performing my work duties, like I have protocols. I'm happy – everything is defined in advance and I know how to act." (58)

Applicant has not informed his Russian relatives that he is in the process of applying for a public trust position. Nor has he discussed his salary because of the pay disparity between Russia and the United States. (Tr. 69)

Character Evidence

After arriving in the United States, Applicant worked as an information technical consultant at a major university from 2018 to 2021. His performance evaluations from that time period are exemplary. His supervisors went to great lengths to describe the high caliber of his work and the contribution he made to the university. (AE A – AE D) Similarly, his current manager, the Vice President, Technology Operations; and his former manager, Vice President of Engineering, submitted equally favorable reference letters documenting his superior performance and contribution he makes to the company. Applicant agreed that things were going well for him at his current job. (Tr. 59-60; AE F, AE G)

Applicant is a board member on his homeowner's association. He was a member of the construction team that set up the stage for his daughter's school theater. Applicant and his wife also volunteer at a local animal rescue facility. (Tr. 74-75)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance [or a public trust position]." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government's authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

The standard that must be met for assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, vulnerabilities, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable eligibility or access determination may be made.

When evaluating an applicant's suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

A person who seeks access to sensitive 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

sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. 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 and trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance [or access to sensitive information].” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security.”

Analysis

Foreign Influence

AG ¶ 6 explains the trustworthiness concern about “foreign contacts and interests,” stating:

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 lists conditions that could raise a trustworthiness 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; and
- (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.

Applicant's contacts with his immediate family members and mother-in-law in Russia, and to a lesser extent the presence of his Belarusian father-in-law in Kyrgyzstan, create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion" and "a potential conflict of interest between [his] obligation to protect classified or sensitive information or technology and [his] desire to help a foreign person, group, or country by providing that information or technology." The nature and scope of intelligence operations conducted by those countries and their overt antagonism to U.S. and western national security interests create these heightened concerns due to the vulnerable positions of those family members, and their natural affection and affinity with Applicant and his wife.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

For Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the [Administrative] Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." See ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country 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, the government ignores the rule of law including widely accepted civil liberties, terrorism causes a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The *relationships* of Russia and to a lesser extent Belarus and Kyrgyzstan with the United States, and the conditions in those countries place a significant burden of

persuasion on Applicant to demonstrate that his contacts with those foreign nationals do not pose a trustworthiness risk because of the risks of attempts to influence him emanating from those countries. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns that may arise from entities in Russia, Belarus, or Kyrgyzstan.

The issue in this case is whether Applicant's ties and contacts with foreign nationals create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. sensitive information that he will have if his public trust eligibility is approved. Guideline B security or trustworthiness concerns are 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

While there is no evidence that intelligence operatives from or in Russia, Belarus, or Kyrgyzstan seek or have sought sensitive or economic information from or through Applicant personally, nevertheless, it is not prudent to rule out the risks of such a possibility in the future. Applicant's contacts with foreign nationals in those countries "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's contacts with foreign nationals in Russia, Belarus, and Kyrgyzstan create a potential conflict of interest because those foreign nationals or foreign officials with knowledge of Applicant's contacts in those countries could place pressure, directly or indirectly, on Applicant in an effort to cause him to compromise sensitive information. Those relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with foreign nationals and has established resulting concerns over potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six 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 United States;

(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 and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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 had limited contacts with his immediate family members in Russia and more frequent contacts with his mother-in-law directly or through his wife. Even though such contacts with his immediate relatives are infrequent, one cannot overlook the fact that those contacts are with *immediate* relatives as opposed to distant relatives or someone he is related to by marriage. His mother-in-law is someone with whom Applicant, his wife, and children enjoy a close relationship and who has visited Applicant's family in the United States four times since 2016.

Applicant has worked in the information technology field the majority of his working life and from all accounts is highly qualified and skilled in his profession. Were his identity and skill set discovered, the fact that he has relatives in Russia and Kyrgyzstan could place him in an untenable position. This is especially true given the history of Russian operatives as described in AN Exhibit II and the wide-ranging influence tools they have utilized to further their interests. Such contacts are relevant for mitigation and whole-person assessments.

As indicated in the Foreign Influence disqualifying conditions section, *supra*, Applicant had multiple connections and contacts with relatives in Russia and to a lesser extent with his father-in-law in Kyrgyzstan. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. I recognize that Applicant has made the United States his home and is a productive and law-abiding citizen. However, his familial connections in Russia and Kyrgyzstan cannot be overlooked or minimized.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his relatives, particularly those in Russia. Applicant's cumulative connections to them vary in degree and are ongoing, and his connections to the United States are insufficient to overcome the foreign

influence trustworthiness concerns under Guideline B at this time. This is particularly true given the degradation of relations between the United States and Russia since the onset of the war with Ukraine, which is ongoing. None of the mitigating conditions are fully applicable.

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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 41-year-old senior systems administrator, who has been employed by a defense contractor since February 2022. He seeks a public trust position to perform his duties and presumably, if granted a public trust position, would be eligible to perform a wider range of duties with increased responsibility. Applicant is highly educated, knowledgeable, and qualified in the information technology field. His employment record in the United States has been exemplary. His employers laud him in all respects. In short, he would be an asset to any employer.

Applicant's contacts with his foreign relatives vary but can be considered relatively recent and ongoing. These connections raise significant foreign influence trustworthiness concerns. A Guideline B decision concerning Russia, Belarus, and Kyrgyzstan must take into consideration the geopolitical situation and dangers involving those countries. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion). Those countries are dangerous places because of violence from terrorists and criminals, and their governments do not respect the full spectrum of human rights. They aggressively target the United States to obtain a technology advantage over western nations. The roles of their governments, rivalries with the United States, and actions of their intelligence services cause heightened and serious trustworthiness concerns.

The relationship between Russia and the United States has deteriorated notably since the onset of the war between Russia and Ukraine. As AN Exhibit II amply explains, Russia has been known to use coercive and unorthodox methods to further its interests. It would not be in the national interest of the United States to place Applicant in a potentially compromising position where he would have to balance his loyalties between the United States and the safety of his relatives. Perhaps if the geopolitical situation between the respective countries improves, Applicant's situation can be reevaluated. This outcome should in no way be construed to suggest that Applicant is anything but a loyal and productive U.S. citizen; however, given the current state of affairs granting him national security eligibility and exposing him to sensitive protected information is not advisable or appropriate.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility or eligibility for a public trust position, there is a strong presumption against granting a security clearance or public trust position. *See Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant did not mitigate foreign influence trustworthiness 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 and 1.b: Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Robert Tuidor
Administrative Judge