



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



In the matter of:)
)
) ISCR Case No. 23-00560
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: Joshua Sindel, Esq.

05/31/2024

Decision

Curry, Marc, Administrative Judge:

Applicant’s spouse, a Russian citizen currently living with him in the United States as a permanent U.S. resident, together with her parents, both Russian citizens and residents, render Applicant an unacceptable security risk. Clearance is denied.

History of the Case

On March 14, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudication Services (CAS) issued a statement of reasons (SOR) alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017. The SOR informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue Applicant’s security clearance.

On March 20, 2023, Applicant answered the SOR, admitting the allegations and requested a hearing, whereupon the case was assigned to me on July 19, 2023. On January 5, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the case for February 6, 2024. The hearing was held as scheduled. I considered Applicant's testimony, and I received two Government exhibits (Government Exhibit (GE) 1 and GE 2) and four Applicant exhibits (Applicant Exhibit (AE) A through AE D). Also, I incorporated a Government memorandum with 26 attachments, marked as Hearing Exhibit (HE I) Attachments (Att.) 2 through 27, in support of a motion for me to take administrative notice of facts about Russia. Applicant's attorney did not object and I granted the motion. The transcript was received on February 16, 2024.

Findings of Fact

Applicant is a 34-year-old married man. He earned a bachelor's degree in 2011 and a master's degree in 2013. Both degrees were in the field of aerospace engineering. (AE D) For the past eight years, Applicant has been working for a defense contractor that specializes in the design and integration of space-based telescopes. Recently, he was promoted to the position of lead integration and test engineer. (Tr. 51)

Applicant's wife is a Russian citizen. She immigrated to the United States in 2010 on a student visa. In the United States, she earned an associate degree, a bachelor of science degree in biochemistry, and a doctorate in molecular biology. (Tr. 24) Currently, she works in the biotech industry as a technical sales consultant. (Tr. 24) Applicant and his wife married in 2019. (Tr. 26) She has never worked in Russia. (Tr. 24) Applicant traveled to Russia with his wife once since he has been married, during the Christmas of 2021. (Tr. 28, 29) Applicant's wife traveled to Russia on her own an additional time in 2022. (Tr. 29)

Applicant's father-in-law is a citizen and resident of Russia. He is an ophthalmologist who works at a hospital. (GE 1 at 23; Tr. 32, 56) Previously, he served for 20 years in the Russian Navy as a physician on a submarine. (Tr. 31) He retired as a colonel. (Tr. 55) He receives a pension for his time serving in the Russian Navy. (Tr. 55)

Applicant's mother-in-law is a citizen and resident of Russia. (Tr. 33) She is retired. (Tr. 33) During her career, she worked in various fields, none of which were related to the Russian government. (Tr. 33)

Applicant communicates with his in-laws approximately once per month by text. (Tr. 35) Sometimes, he speaks to them when his wife is on the phone with them. (Tr. 35) They are aware that he is applying for a security clearance. (Tr. 36) Applicant's parents in-law loaned him \$100,000 to help him purchase his primary residence. The loan was provided in three increments between 2022 and 2023. (Tr. 37) The loan money was deposited into a U.S. bank account. (Tr. 38-39) Applicant and his wife pay his in-laws back the loan monthly. (Tr. 39)

Applicant is highly respected for his work performance and community involvement. (AE A) His supervisor stated, he is “always dependable, honest, and looking to better himself” and is adept at performing well under challenging conditions. (AE B) A former coworker stated, he is a “quick-thinking” individual who was the strongest of all of his coworkers. (AE C) A longtime friend characterized him as a man of high character, integrity and reliability with “an unwavering commitment to upholding the principles of honesty and responsibility.” (AE A)

Administrative Notice

The Russian Federation (Russia) is a highly centralized, authoritarian political system dominated by Vladimir Putin. (HE I, Att. 1 at 1) Russia tries to position itself as a great power competitor to the United States by undermining norms within the existing international system, including core Western institutions such as the North Atlantic Treaty Organization and the European Union, as well as free markets, and democracies. (HE I, Att. 2 at 2) Russia uses espionage and cyber-threats to influence other countries’ decisions and compromise critical infrastructure. (HE I, Att. 10 at 12) Russia’s commercial espionage is so pervasive that the U.S. Commerce Department’s Bureau of Industry and Security severely restricted license applications for exports and reexports. (HE I, Att. 6)

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.” *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, as amended.

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, 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 common-sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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. “[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

Under this guideline, “foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance.” (AG ¶ 6) A Guideline B adjudication is not a judgment on an applicant’s character, patriotism, or loyalty to the United States. Instead, it is a determination as to whether an applicant’s circumstances foreseeably present a security risk. See ISCR Case No. 19-00831 at 5 (App. Bd. July 29, 2020).

Russia is an adversary that has historically sought to undermine Western, liberal values and is seeking to expand its influence worldwide through any means necessary, including espionage, cyberattacks, and interference in foreign elections. Under these circumstances, Applicant’s relationship with his wife and parents-in-law triggers the application of 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.”

The following mitigating conditions under AG ¶ 8 are potentially applicable, as follows:

(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; and

(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.

Russia’s ruthlessness in expanding its malign sphere of influence in the global international order generates a very heavy burden for applicants with Russian family or financial interests to overcome in order to mitigate the security concern. See ISCR Case No. 17-04208 at 5 (App. Bd. Aug. 7, 2019) Applicant is an exceptional individual, well respected by his supervisor, his friends, and coworkers. His wife has lived in the United States for her entire adult life, and Applicant’s contact with his parents-in-law is

infrequent. Conversely, his father-in-law is a retired colonel in the Russian Navy and, in addition to their family ties, Applicant has a significant financial obligation to him, as he is currently repaying a \$100,000 personal loan. Given the depth of these contacts and the country involved, none of the mitigating conditions apply. Applicant failed to mitigate the security concern.

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.

In reaching this decision, I considered the relevant disqualifying and mitigating conditions, together with the character evidence concerning Applicant's superior work performance and the respect with which he is held in the community. Unfortunately, this was insufficient to overcome the burden generated by his family contacts with Russia.

Formal Finding

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.c: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge