



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01390

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel

For Applicant: *Pro se*

03/18/2025

Decision

COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the Guideline B, foreign influence security concerns. Applicant's eligibility for a security clearance is denied.

History of the Case

On August 23, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DCAS acted under Executive Order 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), effective June 8, 2017.

Applicant answered the SOR on September 21, 2024, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 6, 2024. The evidence included in the FORM is identified as Government Exhibits (GE) 3 and 4 (GE 1 and 2

include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on November 20, 2024. He was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He failed to submit any information. All GE are admitted into the record without objection. The case was assigned to me on February 7, 2024.

Procedural Ruling

I took administrative notice of facts concerning the countries of Russia, Moldova, and Ukraine. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. (See 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 in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports. (See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice))

Findings of Fact

In Applicant's answer to the SOR, he admitted all the SOR allegations, with some explanation. The SOR alleged as follows:

1. Applicant's father and brother are citizens and residents of Moldova. (SOR ¶ 1.a);
2. Applicant's cohabitants are citizens of Ukraine (SOR ¶ 1.b);
3. Applicant's friend is a citizen of Russia and Moldova (SOR ¶ 1.c);
4. Applicant's friend is a citizen of Moldova (SOR ¶ 1.d);
5. Applicant provided \$200 monthly financial support to his cohabitant's mother, a citizen and resident of Ukraine (SOR ¶ 1.e);
6. Applicant provided financial support to his cohabitant's brother, a citizen and resident of Ukraine, who also serves in the Ukrainian Army (SOR ¶¶ 1.f, 1.i);
7. Applicant provided \$3,000 in financial support to his father, a citizen and resident of Moldova (SOR ¶ 1.g);

8. Applicant provided \$2,000 in financial support to his brother, a citizen and resident of Moldova (SOR ¶ 1.h);
9. Applicant's cohabitant's mother and friends are citizens of Ukraine (SOR ¶ 1.j).

After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 37 years old. He was born in Moldova in 1987. He came to the U.S. in 2003. He became a naturalized U.S. citizen in January 2013. He has worked for a federal contractor since June 2012. He is divorced and has no children. He currently cohabits with his girlfriend, a citizen of Ukraine, and her 16-year-old daughter, a U.S. citizen. He is seeking a security clearance for the first time. (GE 3)

Applicant remains a dual citizen of the United States and Moldova. He still retains a Moldovan passport even though it expired 2023. He does not plan on renewing it. He has never looked into the process for renouncing his Moldovan citizenship. He currently holds a U.S. passport that expires in 2033. (GE 3-4)

Foreign Influence

1. Applicant's father and brother are residents and citizens of Moldova. His father is 70 years old. His brother is 33 years old. He has weekly, electronically or telephone, contact with both of them. He admitted providing financial support to both in the past (\$3,000 to his father; \$2,000 to his brother), but stated that his brother is now his father's caregiver and has a well-paying job. He stated that neither his father or brother hold positions in the Moldovan government. (GE 2-3)

2. Applicant's girlfriend is 40 years old and has lived with him since March 2020. She is a citizen of Ukraine. She has lived in the U.S since 2008. Her daughter also lives with Applicant, but she is a U.S. citizen and a minor living with her mother. He is pursuing citizenship status for his girlfriend. (GE 2-3)

3. Applicant's girlfriend's mother and brother are citizens of Ukraine. Her brother is in the Ukrainian military. Applicant sent the mother approximately \$200 monthly and an aggregate total of approximately \$1,500. He sent the brother about \$200 monthly until he joined the military for an aggregate total of approximately \$3,000. Currently, he sends the brother approximately \$100 when he is on leave. Applicant does not have contact with the mother and brother, but his girlfriend communicates with them frequently through telephone calls and texts. (GE 2-4)

4. Applicant is friends with VB, who is a citizen of Moldova and Russia. He has known VB since 1987. He has monthly contact with him by telephone and electronic means, as well as in person. His most recent contact was in 2023. He does not know VB's current address or the name or address of his employer. (GE 3)

5. Applicant is friends with AS, who is a citizen of Moldova. He has known AS since 2001. He has quarterly contact with him by telephone and electronic means, as well as in person. His most recent contact was in 2023. He does not know AS's current address, or the name or address of his employer. (GE 3)

6. Applicant's girlfriend is friends with YO and ER, who are both citizens of Ukraine. Applicant has no contact with either friend but his girlfriend has periodic contact with them by phone and texts. Applicant does not know their addresses or their employment situation. His girlfriend's most recent contact with these friends was in 2023. (GE 3)

It should be noted that the date of last contact information was obtained from Applicant's security clearance application (GE 3), which he completed in September 2023. No contact information is contained in the record beyond that time. Additionally, because Applicant chose to have his case decided based solely on the written record, I was unable to judge his demeanor and credibility in reaching this decision.

Administrative Notice-Russia

Russia has a highly centralized, weak, multi-party political system dominated by the president. Russia has significant human-rights problems, marked by restrictions on civil liberties, discrimination, denial of due process, forced confessions, torture, other prisoner mistreatment, and the government's failure to prosecute officials who commit serious violations. Government officials also engage in electronic surveillance without proper authorization.

Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advance weapons technologies beneficial to Russia's military modernization and economic development. Russia's intelligence services as well as private companies and other entities frequently seek to exploit Russian citizens or persons with family ties to Russia who can use their insider access to corporate networks to steal secrets. They also have offered financial inducements to U.S. government officials and citizens to encourage them to compromise classified information. Russia's attempts to collect U.S. technological and economic information represent a growing and persistent threat to U.S. security.

Administrative Notice-Ukraine

On June 13, 2024, Presidents Biden and Zelenskyy signed the U.S.-Ukraine Bilateral Security Agreement. Under this ten-year agreement, the United States and Ukraine committed to strengthening security and economic cooperation, furthering Ukraine's institutional capacity building and reform progress, seeking accountability for Russia's actions, and establishing the conditions for a just and lasting peace. To date, [the United States has] provided approximately \$55.3 billion in military assistance since Russia launched its premeditated, unprovoked, and brutal full-scale invasion of Ukraine on February 24, 2022, and approximately \$58.1 billion in military assistance since Russia's initial invasion of Ukraine in 2014.

The Justice Department has prosecuted several criminal cases involving export enforcement to Ukraine. Several individuals with Ukrainian ties were prosecuted for committing various cybercrimes. Human rights abuses involving Ukrainian government officials have been reported. Those reports included claims of torture and cruel treatment for prisoners.

Administrative Notice-Moldova

Although Moldova has been independent from the Soviet Union since 1991, Russian forces have remained on Moldovan territory east of the Nistru River in the breakaway region of Transnistria. Terrorist groups and those inspired by such organizations are intent on attacking U.S. citizens abroad. The U.S. Government has previously exposed Russia's attempts to use covert operatives to subvert democracy in Moldova. The Department of State has issued a "Level 2: Exercise Increased Caution" to Moldova due to unresolved conflict between the breakaway region of Transnistria and the central government.

Significant human rights issues included credible reports of: torture or cruel, inhuman, or degrading treatment or punishment by authorities; harsh and life-threatening prison conditions; serious problems with the independence of the judiciary; serious government corruption; extensive gender-based violence, including domestic and intimate partner violence and sexual violence; crimes involving violence or threats of violence targeting Roma; and crimes involving violence or threats of violence targeting persons with disabilities.

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 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, these guidelines are applied 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 careful weighing 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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.

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

Analysis

Guideline B, Foreign Influence

¶ 7: The security concern relating to the guideline for foreign influence is set out in AG

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 indicates conditions that could raise a security 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;

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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship among Russia, Ukraine, Moldova, and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives and friends affiliated with Russia, Ukraine, and Moldova do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives and friends living in these countries who might be coerced by governmental entities or pressured to assist those countries.

While there is no evidence that intelligence operatives from these countries seek or have sought classified or economic information from or through Applicant or his relatives or friends living in these countries, it is not possible to rule out such an outcome in the future. AG ¶¶ 7(a) and 7(b) apply based upon Applicant's family members, his girlfriend's family members, and their friends who are residents and citizens of Russia, Ukraine, and Moldova.

Applicant's girlfriend, with whom he has lived for five years, still has strong ties to her family living in Ukraine, since she frequently communicates with her mother and brother. Because of the length of his cohabitant relationship with his girlfriend, her affection and loyalty to her family can be imputed to Applicant similar to an in-law relationship. Additionally, Applicant has provided financial support to his girlfriend's mother and brother, establishing his financial ties to them. AG ¶ 7(e)

AG ¶ 8 lists 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 U.S.;

(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.

AG ¶ 8(a) does not apply. Applicant's position could cause him to be placed in a position to choose between the interests of his and his girlfriend's relatives and those of the United States. Applicant testified that he has regular contact with his relatives in Moldova and his cohabitant-girlfriend has regular contact with her family in Ukraine. AG ¶ 8(c) does not apply to those contacts. It does apply to Applicant's two friends and his girlfriend's two friends because those contacts are casual and infrequent. SOR ¶¶ 1.c-1.d, and 1.j are resolved for Applicant. (Note, SOR ¶ 1.j, also refers to Applicant's girlfriend's mother, which is duplicitous with SOR ¶ 1.e, and therefore also found for Applicant)

Applicant has not met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." Although he has been a U.S. citizen since 2013, he also remains a citizen of Moldova. His girlfriend is a citizen of Ukraine. Other than his employment with a defense contractor and his possession of a current U.S. passport, he failed to provide sufficient details about his connections to this country, such as home ownership, investments, etc. He has regular contact with his father and brother in Moldova and his girlfriend has regular contact with her mother and brother in Ukraine. The evidence supports the conclusion that Applicant has substantial ties to his relatives in Moldova and his girlfriend has ties to family in Ukraine. Because of those ties, it is unclear that he would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) does not apply.

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(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. At this point, the evidence does not support his long-standing ties and connections to the United States. Therefore, he provided insufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence concerns were not mitigated, except as previously noted above.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b, and 1.e – 1.i	Against Applicant
Subparagraphs 1.c – 1.d, and 1.j:	For Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge