

KEYWORD: Foreign Influence

DIGEST: Foreign influence security concerns were identified after submission of Applicant's May 2005 security clearance application. In April 2004, Applicant married a Russian national, whose parents and relatives are resident citizens of Russia. In July 2006, Applicant and his wife separated, and in October 2006, Applicant formally filed for divorce. The underlying basis for foreign influence concerns no longer exists. Clearance is granted.

CASENO: 03-25260.h1

DATE: 09/28/2007

DATE: September 28, 2007

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| In re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) |                        |
| SSN: -----                       | ) | ISCR Case No. 03-25260 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
|                                  | ) |                        |

**DECISION OF ADMINISTRATIVE JUDGE  
ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**  
Robert Coacher, Esq., Department Counsel

**FOR APPLICANT**  
Alan V. Edmunds, Esq.

**SYNOPSIS**

Foreign influence security concerns were identified after submission of Applicant's May 2005 security clearance application. In April 2004, Applicant married a Russian national, whose parents and relatives are resident citizens of Russia. In July 2006, Applicant and his wife separated, and in October 2006, Applicant formally filed for divorce. The underlying basis for foreign influence concerns no longer exists. Clearance is granted.

## STATEMENT OF THE CASE

\_\_\_\_\_ On May 2, 2005, Applicant submitted a Security Clearance Application (SF 86).<sup>1</sup> On February 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup>

The SOR alleges security concerns under Guideline B (Foreign Influence). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer submitted and signed by Applicant's attorney on March 9, 2007, Applicant responded to the SOR allegations, and elected to have his case decided at a hearing. On May 2, 2007, the case was assigned to me. On June 4, 2007, DOHA issued a notice of hearing scheduling the case for hearing on August 2, 2007. The hearing was convened as scheduled. I held the record open to afford Applicant the opportunity to submit additional materials, and Applicant did submit additional material. DOHA received the hearing transcript (Tr.) on August 20, 2007.

## FINDINGS OF FACT

\_\_\_\_\_ Applicant denied all the SOR allegations with explanations. After a thorough review of the record evidence, I make the following additional findings of fact.

Applicant is a 33-year-old staff engineer - systems (2) who has worked for a government contractor employer since December 1998. He has completed approximately three years of college, and continues to pursue his degree on a part-time basis. He estimates he has "about a year left" before graduating and is majoring in management. Applicant has continuously held a security clearance for 15 years. He was initially granted a secret security clearance in January 1992, which was later upgraded to a top secret clearance. He holds a top secret clearance.

Applicant currently resides in Germany and estimates he spends approximately 90% of time on the road. In April 2004, Applicant married a Russian national he met while he was working in China. His wife's parents, grandmothers, aunt, uncle and cousins are resident citizens of Russia. In conjunction with meeting and marrying his wife, Applicant traveled to Russia a number of times in

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<sup>1</sup> Government Exhibit (GE) 2, (Electronic Standard Form (SF) 86, Security Clearance Application.)

<sup>2</sup> On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006. Applicant's case is resolved under the revised Adjudicative Guidelines.

the years 2002 to 2005. These facts raised foreign influence concerns, which formed the basis of DOHA issuing Applicant an SOR in February 2007.

In July 2006, Applicant and his wife separated. In October 2006, Applicant's attorney filed for divorce. In July 2007, Applicant signed a separation agreement, and his divorce attorney estimates his divorce will be final in October 2007. Applicant has not communicated with his wife since October 2006 and it is his understanding she lives with a friend in the U.S. He has had no communication whatsoever with his in-laws since January 2006, which was the last time he visited Russia. He does not speak Russian nor do his in-laws speak English and he was only able to communicate with them when his wife served as a translator.

### **POLICIES**

The Directive sets forth adjudicative guidelines (AG) which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each AG applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.<sup>3</sup> Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence) is the applicable relevant AG.

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>4</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

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<sup>3</sup> AG ¶ 2(a). "... The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of "the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . ."

<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence<sup>5</sup> a *prima facie* case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.<sup>6</sup> The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.<sup>7</sup>

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7. \

## CONCLUSIONS

Under Guideline B (Foreign Influence), the government's concern is that foreign contacts and interests may be a security concern. If the individual has divided loyalties or foreign financial interests, he or she may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. AG ¶ 6.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

- (a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

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<sup>5</sup> ISCR Case No. 98-0761, at 2 (App. Bd. Dec. 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199, at 3 (App. Bd. Apr. 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive, ¶ E3.1.32.1.

<sup>6</sup> *Egan*, *supra* n.8, at 528, 531.

<sup>7</sup> *See Id.*; AG ¶ 2(b).

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>8</sup>

The government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

The underlying basis forming a foreign influence concern no longer exists inasmuch as Applicant has been legally separated since July 2006, has had no contact with his wife since October 2006, filed for divorce in October 2006, signed his separation agreement in July 2007, and his final divorce decree is pending which will most likely be granted in October 2007. I view the recent development in Applicant's personal life sufficient to alleviate any foreign influence concerns and consider Applicant constructively divorced.

There being no disqualifying conditions, there is no need to apply or discuss mitigating conditions under this security concern.

Considering the totality of the circumstances, Applicant established it is unlikely he will be placed in a position of having to choose between the interests of his spouse's family and the interests of the United States. His contact with his spouse and in-laws is non-existent. Applicant met his burden of showing there is little to no likelihood that his relationship with his spouse or her family could create a risk for foreign influence or exploitation.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable AGs. I specifically considered Applicant's answers to the SOR, his testimony, and favorable evidence he submitted at his hearing. I also considered that there is no evidence that he has ever mishandled or caused the compromise of classified information. Considering all available information, and the whole person concept, I find Applicant has mitigated the foreign influence security concern.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence  
Subparagraphs 1.a -1.d

FOR APPLICANT  
For Applicant

### **DECISION**

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<sup>8</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuidor  
Administrative Judge