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

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| In the matter of: | ) | |
| | ) | |
| ---------- | ) | ISCR Case No. 06-13973 |
| SSN: ---------- | ) | |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

March 13, 2008

## Decision

HARVEY, Mark W., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline B (Foreign Influence). Clearance is denied.

## Statement of the Case

On June 7, 2004, Applicant submitted a Security Clearance Application (EPSQ 86).[1] On August 23, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,[2] 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,

[1]Item 5. There is no allegation of falsification of Applicant's 2004 EPSQ 86.

[2]Item 1 (Statement of Reasons (SOR), dated Aug. 23, 2006). Item I is the source for the facts in the remainder of this paragraph unless stated otherwise.

1992, as amended and modified.[3] 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.

Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing.[4] A complete copy of the file of relevant material (FORM), dated August 27, 2007, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.[5] Applicant did not provide a response to the FORM. The case was assigned to me on January 31, 2008.

## Procedural Ruling

Department Counsel requested administrative notice of the facts in the FORM concerning the Russian Federation (FORM at page 3-7) and supporting documents to show detail and context for the facts in the FORM (Ex. I to VIII—listed in FORM at 7). Applicant did not object to me taking administrative notice.

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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). In addition to the facts outlined in the FORM at 3-7, I have taken administrative notice of facts in Exhibits I to VIII. *See* the Russian Federation section of the Findings of Fact of this decision, *infra*.

[3]On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are not applicable to Applicant's case because his SOR was issued on Aug. 23, 2006.

[4]Item 4 (Applicant's response to SOR) is dated Sep. 21, 2006. He signed a receipt for the SOR on Sep. 2, 2006 (Item 3).

[5]The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated Aug. 30, 2007; and Applicant's receipt is dated October 5, 2007. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

## Findings of Fact[6]

As to the SOR's factual allegations, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.d to 1.g in his response to the SOR. He also provided an explanation for all SOR ¶¶ 1.d to 1.g. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 47 years old (Item 5). He was born in Greece, and received a degree from a Russian University in 1981 (Item 5 at 1, 3). In 1984, he married his first wife in Moscow (Item 5 at 5). They divorced in 1996. *Id*. In 1985, his first son was born in Moscow. *Id*. In 1996, he married his current wife, who is a U.S. citizen (Item 5 at 4). In 1997 and 2003, his second and third sons were born in the United States (Item 5 at 6). His first son became a naturalized U.S. citizen in 1996 (Item 5 at 5).

From 1981 to 1989, Applicant worked for a Union of Soviet Socialist Republics (USSR) Ministry in the USSR and overseas that had important and sensitive responsibilities for foreign affairs and national security (Item 5 at 6-7). However, he has not had any contact since 1989 with any employees from this Ministry (Item 6 at 2). He was a member of the USSR Communist Party from June 1989 until August 1989 (Item 5 at 9).[7] In August 1989, he terminated his Communist Party membership and requested political asylum in the United States (Item 5 at 7). In March 1996, he became a U.S. citizen (Item 5 at 7).

Applicant's contacts with Russian government officials after he emigrated from Russia in 1989 were "official," as they were all related to his employment with U.S. corporations. From 1996 to 2001, Applicant held U.S. corporate employment that resulted in frequent contact with Russian officials (Item 6 at 2-3). From October 2002 to December 2003, Applicant lived in Russia on behalf of a U.S. corporation, and had regular contact with Russian government officials employed by an important Russian government agency. *Id*.; Item 5 at 7. From October 1998 to October 2002, Applicant traveled to Russia more than 20 times (Item 6 at 3-6). The U.S. Government reaped some benefit of his travel to Russia and employment with the U.S. corporations (Item 4 at 2). He currently has an official U.S. Government passport. *Id*. The record does not include information about his travel to Russia after December 2003.

Applicant's parents are currently citizens and residents of Russia.[8] He has monthly, telephonic contact with his parents. His father retired from an important city governmental position, and until about 10 years ago, his mother was employed by the Russian and/or USSR Government. His father receives a disability pension. His mother was a well-known public figure, and frequently presented a radio show at an

[6] The facts in this decision do not specifically describe employment or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

[7] Applicant was coerced into joining the Communist Party (Item 5 at 17, Item 6 at 7).

[8] Items 4 and 6 are the sources for the facts in this paragraph, unless stated otherwise.

independent radio station. His mother visited Applicant in the United States three times, and his father visited Applicant in the United States twice. They stayed at Applicant's residence. His parents do not plan to immigrate to the United States. Applicant does not provide financial support to them.

Applicant had part ownership in an apartment located in Russia.[9] His share was valued at $8,000 to $9,000. He was receiving $200 per month in rent, which he used to pay utilities. Most likely the apartment became the property of the Russian Government in February 2007 because of Applicant's acceptance of U.S. political asylum.

## The Russian Federation[10]

The Russian Federation is a vast and diverse country. It is about twice the size of the United States, and has a population of 142 million people. It achieved independence with the dissolution of the Soviet Union on August 24, 1991.

The threat of terrorism in Russia continues to be significant. Travel in the areas in the vicinity of Chechnya may be dangerous, despite Russian efforts to suppress the terrorists. Acts of terrorism include taking hostages and bombings. Applicant's parents do not live in Chechnya.

Russia has recognized the legitimacy of international human rights standards, but in Chechnya the treatment of some prisoners and detainees violates human rights standards. Russia has a large prison population, and prison conditions are below international standards. The Russian Government has weakened freedom of the press by eliminating some television networks and by encouraging self-censorship.

The Russian Federation's intelligence capability is significant and focuses on collection of information from the United States.[11] The old Soviet Union engaged in a series of high profile espionage missions against the United States. The Russian Federation continued in this tradition. The 2004 Intelligence Threat Handbook (2004 ITH) states, "The FBI estimates that more than 105,000 Russians immigrated to the United States in the late 1980s. The Russians, like many intelligence services have traditionally used émigrés to gather intelligence." *Id*. at 16. However, the specific espionage examples cited in the 2004 ITH involved native-born U.S. citizens or Russian diplomats, and none involved Russian émigrés.

[9] Item 5 at 6, and Item 6 at 2 are the sources for the facts in this paragraph.

[10] Exhibit IV ("Russian Political, Economic, and Security Issues and U.S. Interests," Congressional Research Service Report, May 31, 2007) and the FORM pages 3-7 are the source for the facts in this section, unless stated otherwise.

[11] Exhibit VI, ("Intelligence Threat Handbook," Centre for Counterintelligence and Security Studies for the Interagency Operational Security Support Staff, June 2004) is the source for the facts in this paragraph.

The relationship between the United States and Russia remains complicated. The United States and Russia share common interests on a broad range of issues, including the reduction of strategic arsenals, prevention of the spread of weapons of mass destruction, and in combating terrorism. Since 1992, the United States has spent over $7 billion in Cooperative Threat Reduction funds and related programs to reduce the threat of Russian weapons of mass destruction. Billions of dollars have also been allocated to aid Russian democratization and market reform. Recently, however, the Russian-U.S. relationship shows more discord than in previous years because for example, Russia has opposed deployment of a U.S.-developed missile defense system in Poland. Nevertheless, there are important areas of continued cooperation. Russia and the United States seek to compel Iran to bring its nuclear programs into compliance with International Atomic Energy Agency (IAEA) rules. Specifically, on March 24, 2007, Russia voted with the United States on a UN Security Council resolution that tightens economic and political sanctions on Iran because of Iran's nuclear program.

## Policies

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence.[12] The government initially has the burden of producing evidence to establish

[12] "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." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not

a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, "The 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 [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." 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).[13]

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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* Executive Order 12968 (Aug. 2, 1995), Section 3. Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. 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.

## Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

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prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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).

[13]"The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, [evaluates] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

**Foreign Influence**

Directive ¶ E2.A2.1.1 describes why a security concern may exist under Guideline B:

> when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Two of eight possible foreign influence disqualifying conditions (FI DC) could raise a security concern in this case. FI DC 1 applies where an "immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Directive ¶ E2.A2.1.2.1. "Immediate family members" include a spouse, father, mother, sons, daughters, brothers, and sisters. Directive ¶ E2.A2.1.3.1. FI DC 6 applies where there is "[c]onduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government." Directive ¶ E2.A2.1.2.6.

I disagree with the contention in the FORM that FI DC 3, "Relatives, cohabitants, or associates who are connected with any foreign government," and FIDC 8, "A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence" apply.[14] The Russian Government does not currently employ his parents. The information about their receipt of Russian pensions is not sufficiently specific for application of FI DC 3. Applicant said he thought his property interest in a Russian apartment was terminated in 2007, ending the applicability of FI DC 8.

I agree with the FORM that FI DCs 1 and 6 apply. Applicant's father and mother are "immediate family members" and persons to whom he "has close ties of affection or obligation." They are also citizens of and live in Russia. Even if only one relative lives in Russia, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006). 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. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). However, such ties in this case do raise a security concern under FI DCs 1 and 6 because his parents were Russian government employees with significant stature. Moreover, Applicant himself had sensitive, national security-related employment with the USSR Government from 1981 to 1989. After immigrating to the United States in 1989, Applicant obtained U.S. corporate employment which resulted in more than 20 trips to Russia, and from October

[14] Directive ¶¶ E2.A2.1.2.3 and E2.A2.1.2.8.

2002 to December 2003, he lived in Russia. His connections to Russia are sufficiently significant to make him vulnerable to Russian coercion, exploitation or pressure.

Applicant is required to present evidence of rebuttal, extenuation or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

Security concerns based on foreign influence can be mitigated by showing that any of the five foreign influence mitigating conditions (FI MC) apply. FI MC 1 recognizes that security concerns are reduced when the "immediate family member(s), (spouse, father mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." Directive ¶ E2.A2.1.3.1. Notwithstanding the facially disjunctive language of FI MC 1, the Appeal Board has decided that an Applicant must prove that his family members, cohabitant or associates are not agents of a foreign power, and are not in a position to be exploited by a foreign power in a way that could force Applicant to chose between the person(s) involved and the United States. ISCR Case No. 02-14995 at 5 (App. Bd. July 26, 2004).

The Appeal Board, however, does not apply the statutory definition of "agent of a foreign power." Instead, the Appeal Board has held that "An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of Foreign Influence Mitigating Condition 1." ISCR Case No. 02-24254 (App. Bd. Jun. 29, 2004). In a series of decisions, the Appeal Board has broadly defined "agent of a foreign power."[15]

The second prong of FI MC 1 provides that it is potentially mitigating where the "associate(s) in question are not . . . in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person involved and the United States." The Appeal Board interprets this language as establishing a very high standard; i.e., an applicant must affirmatively prove that there is at most a slight possibility that anyone might attempt to exploit or influence a foreign relative or acquaintance in the future. *See* ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (stating, "[FI MC] 1 does not apply because, as is well settled, it requires that Applicant demonstrate that his relatives are not in a position which could force Applicant to

[15]The discussion in this opinion of FI MC 1 relies heavily on and occasionally quotes without attribution the discussion of this same issue in ISCR Case No. 03-10312 at 6-9 (A.J. May 31, 2006). *See also* ISCR Case No. 03-10954 at 3 (App. Bd. Mar. 8, 2006) (attorney/consultant to an entity controlled by a foreign ministry is an "agent of a foreign power"); ISCR Case No. 03-19101 at 6 (App. Bd. Jan. 21, 2006) (part-time secretary for the Ministry of Religion is an "agent of a foreign power"); ISCR Case No. 02-2454 at 4-5 (App. Bd. June 29, 2004) (employee of a city government was an "agent of a foreign power"); ISCR Case No. 03-04090 at 5 (App. Bd. Mar. 3, 2005) (employee of the Israeli government is an "agent of a foreign power"); ISCR Case No.02-29143 at 3 (App. Bd. Jan. 12, 2005) (a member of a foreign military is an "agent of a foreign power").

choose between his loyalty to them and his loyalty to the United States."); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2005).

FI MC 1 does not, by its express terms, exclude from consideration applicants with relatives or associates in countries where terrorism has occurred, any more than it excludes person from countries where there are foreign governments, foreign political organizations, or foreign non-governmental organizations. Rather, it focuses on a very specific type of threat–the risk of a foreign power exploiting an applicant's foreign relatives in such a way as to cause an applicant to act adversely to the interests of the United States. The Appeal Board has limited the applicability of FI MC 1 where there is a history of terrorist activity in the foreign country in question. ISCR Case No. 03-22643 (App. Bd. Jun. 24, 2005); ISCR Case No. 02-22461 at 5 (App. Bd. Oct. 22, 2005).

His father and mother are citizens and residents of Russia. The evidence does not establish that his family members living in Russia are Russian agents or that they are agents of any other foreign power.

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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. The complicated relationship of Russia to the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his immediate family members in Russia do not pose security risk and he is not in a position to be forced to choose between loyalty to the United States and his family members.[16] With its occasionally adversarial stance and its mixed human rights record, it is conceivable that Russia would target any citizen in an attempt to gather information from the United States.

There is no evidence that his elderly father and mother are or have been, political activists, challenging the policies of the Russian Government. Although Applicant and his parents were employees of the USSR and/or Russian governments, they do not currently work for the Russian Government or military or any news media. There is no evidence that terrorists have approached or threatened Applicant or his parents for any reason. There is no evidence the Russian Government has approached Appellant (unrelated to his U.S. corporate employment). There is no evidence that his parents living in Russia currently engage in activities which would bring attention to themselves or that they are even aware of Applicant's work. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Russian Government,

[16] An applicant with relatives in Iran, for example, has a much heavier burden to overcome than an applicant with relatives living in Russia. *See* ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). *See also* ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran). *See also* ISCR Case No. 06-17164 at 15 (A.J. Oct. 23, 2007) (listing 23 consecutive cases involving U.S. citizens with Iranian connections whose clearances were denied).

which may seek to quiet those which speak out against it. Applicant deserves some credit because of the reduced possibility that Russia will exploit his family; however, FI MC 1 cannot be applied in this case. Even if there was substantial evidence of the "family members' low-key noncontroversial lifestyle, and the fact that the [Russian Government] has not contacted them about Applicant in the past, such factors are insufficient to support the application of FI MC 1" because of the nature of the Russian Government and its complicated, and sometimes contentious relationship to the United States.

FI MC 2 can mitigate security concerns where "[c]ontacts with foreign citizens are the result of official United States Government business." Directive ¶ E2.A2.1.3.2. Applicant said that the U.S. Government benefited from his visits to Russia. However, his employment was with U.S. corporations, not with the U.S. Government. He did not provide sufficient details or any corroboration to establish his manifestly very significant contacts with Russian citizens and Russian government officials from 1996 to December 2003 resulted from official U.S. Government business.

FI MC 3 can mitigate security concerns where "contact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. Applicant has monthly contacts by telephone with his parents living in Russia, and they visit him and/or stayed with him five times (twice for father, thrice for mother) when they visit the United States. He probably visited them when he visited Russia more twenty times over during the last ten years. FI MC 3 does not apply because his contacts with them are not casual and infrequent. *See* ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).[17]

[17]In regard to FI MC 3, the Appeal Board had determined that contacts with relatives living in a foreign country must be both casual and infrequent. *See* ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). Moreover, contacts with such family members are presumed to be "not casual." *Id*. In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id*.); "family members' low-key and noncontroversial lifestyle, and the fact that the Iranian government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006); one relative living in a foreign country may be sufficient to negate FI MC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)); and an applicant's "refusal to travel to Iran" and "meticulous work habits and practice of strictly following the rules relating to his work" (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)).

**Whole Person Concept**

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole person concept, the Administrative Judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1:

> (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 voluntariness of participation; (6) The presence or absence of rehabilitation and other pertinent 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 Directive ¶ E2.2.3, "The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration" of the guidelines and the whole person concept.

A Guideline B decision concerning Russia must take into consideration the geopolitical situation in Russia, as well as the dangers existing in Russia.[18] Russia is a diplomatic and strategic partner of the United States in some areas where both countries have mutual interests. Russia is a key partner in the search for peace in the Middle East and resolution of problems with Iraq and Iran. Russia was an important ally in World War II, and then our greatest antagonist during the Cold War. Russia has a mixed human rights record and like the United States has been subject to terrorist attacks. Russia is a known collector of U.S. intelligence and sensitive economic information.

Applicant did not mitigate the government's security concerns over possible foreign influence raised by his visits to Russia because he traveled to Russia more than 20 times between 1998 and October 2002. He lived in Russia from October 2002 to December 2003. The file does not indicate whether or not he traveled to Russia after December 2003. He travelled to Russia with the permission of his U.S. corporate employers, and his contacts with Russian citizens and Russian government employees benefited the U.S. Government. He did not, however, provide witness statements about his contacts with Russian citizens and Russian government employees, who could corroborate his contentions about the U.S. Government benefits resulting from his contacts with Russian citizens and Russian government employees.

[18] 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).

Applicant's ties to his parents living in Russia with whom he has monthly telephone conversations as well as his frequent visits to Russia establish his close ties of affection to them. There is a possibility Applicant could 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.

Applicant has lived in the United States since 1989 (except for the 15 months he lived in Russia in 2002-2003). He became a U.S. citizen in 1996. His wife and three sons are U.S. citizens. However, he did not fully develop the evidence showing his connections to the United States. He did not provide corroborating statements concerning his loyalty and trustworthiness. He did not provide any recommendations of employers, neighbors, friends, or family members supporting his application for a security clearance. After weighing the evidence of his connections to Russia, and to the United States, I conclude Applicant has not carried his burden of mitigating the foreign influence security concern.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[19] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is not eligible for access to classified information.

## 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:

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| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraphs 1.b to 1.c: | For Applicant |
| Subparagraphs 1.d to 1.e: | Against Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | Against Applicant |

## Conclusion

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

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Mark W. Harvey
Administrative Judge

[19] *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).