

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant is 46 years old and has worked as a computer network administrator for a defense contractor since 2001. In 1997, he married a Russian citizen, here in the U.S. His wife has a niece and friends who are citizens and residents of Russia. In 1996, he visited Russia and was taking photographs. He was taken into custody by the Russian police. He was asked if he would be willing to work for them. Applicant agreed to do so provided he did nothing illegal. He deliberately falsified material facts on his security clearance application by omitting that he agreed to work for the Russian police. He has not mitigated the foreign influence or personal conduct security concerns. Clearance is denied.

CASENO: 06-21773.h1

DATE: 07/20/2007

DATE: July 20, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-21773
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and has worked as a computer network administrator for a defense contractor since 2001. In 1997, he married a Russian citizen, here in the U.S. His wife has a niece and friends who are citizens and residents of Russia. In 1996, he visited Russia and was taking photographs. He was taken into custody by the Russian police. He was asked if he would be willing to work for them. Applicant agreed to do so provided he did nothing illegal. He deliberately falsified material facts on his security clearance application by omitting that he agreed to work for the Russian police. He has not mitigated the foreign influence or personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On January 7, 2004, Applicant executed a Security Clearance Application (SF 86).¹ On February 6, 2007, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance and issued a Statement of Reasons (SOR)² to Applicant, detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised AG was provided to Applicant when the SOR was issued.

In a sworn, written statement dated March 1, 2007, Applicant responded to the SOR allegations and requested a hearing. Department Counsel was ready to proceed on April 6, 2007. The case was assigned to me on April 11, 2007. A Notice of Hearing was issued on April 24, 2007, scheduling the hearing for May 15, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered five exhibits, Exs. 1-5. Applicant did not offer exhibits. All exhibits were admitted into the record without objection. Prior to the hearing, the Government requested that administrative notice be taken of the content of nine documents about Russia for administrative notice. At the hearing, these documents were not objected to and they were admitted into the record and marked as Admin. Exs. 1-9. The transcript (Tr.) was received on May 24, 2007.

MOTION TO AMEND THE STATEMENT OF REASONS

At the hearing, the Government moved to amend subparagraph 1.d of the SOR as follows:

1.d You were taken into custody by the Russian police during a visit to Russia in approximately August 1996 after taking pictures of a bridge in Rostov-On-Don. You were interrogated by the Russian Federal Security Service and asked if you would be willing to work for Russia. You agreed but stated you would not do anything that was illegal.

Prior to the hearing, the Government submitted a Motion to Amend the SOR. Pursuant to subparagraph 2 of the SOR, allegations 2. b and 2.c are added:

2.b You falsified material facts on an SF 86, Security Clearance Application, executed by you on January 7, 2004, in response to Question 14 “Your Foreign Activities – Contact with Foreign Government,” which asks: “have you ever had any contact with a foreign government, its establishments (embassies or consulates), or its representatives, whether inside or outside the U.S., other than on official U.S. Government business?” (Does not include routine visa applications and border crossing contacts.). You answered “YES” and disclosed in the remarks section that between July 1, 1996 and September 1, 1996 you had contact with the Russian

¹Ex. 4 (Security Clearance Application, dated January 7, 2004).

²Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

Federation, Russia, in the following manner: “Travel visa to Russia for June 96 until October 1996: Stayed with my future wife, [name], an [sic] her mother, [name]. While visiting, I was detained and questioned by the local militsia [sic]/Police and the Federal Security Service because of some photographs, which I had of a railroad bridge.” You deliberately omitted, in an attempt to mislead, the material facts that you were asked by the Russian Federal Security Service if you would be willing to work for them and that you agreed to do so.

2.c You falsified material facts on an SF 86, Security Clearance Application, executed by you on January 7, 2004, in response to Question 14 “Your Foreign Activities – Contact with Foreign Government which asks: “have you ever had any contact with a foreign government, its establishments (embassies or consulates), or its representatives, whether inside or outside the U.S., other than on official U.S. Government business?” (Does not include routine visa applications and border crossing contacts.). You answered “YES” and disclosed in the remarks section that between July 25, 1996 and September 1, 1996 you had contact with the Federal Security Service, Russia, in the following manner “Detained by FSB for taking pictures of a railroad bridge.” You deliberately omitted, in an attempt to mislead, the material facts that you were asked by the Russian Federal Security Service if you would be willing to work for them and that you agreed to do so.

At the hearing, Applicant did not object to the amendment of subparagraph 1.d. He did not object to the newly added subparagraphs 2. b and 2.c. Accordingly, the SOR is amended as stated above.

FINDINGS OF FACT

Applicant admitted the factual allegations under subparagraphs 1.a through 1.d, 2.b, and 2.c. Those admissions are incorporated herein as findings of fact. He denied the factual allegation under subparagraph 2.a. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 46 years old and is a U.S. citizen and resident. He works as a computer network administrator for a defense contractor since 2001. He has held a security clearance in the past.

From June 1995 to August 1995, Applicant participated in a summer language program at a state university in Moscow.³ He had a scholarship sponsored by an American group of teachers of Russia.⁴ In 1996, he received a master’s degree in mathematics from a well-known university in the U.S.⁵

³Tr. 28.

⁴*Id.*

⁵*Id.* at 37.

Applicant's wife is a Russian citizen. They were married in the U.S. in 1995. She applied for U.S. citizenship about two and one-half years ago.⁶ Their son was born in the U.S. He is not a dual citizen because his mother has not applied for citizenship for him in Russia. Applicant and his wife have no plans to get dual citizenship for their son, who is now seven years old.

Applicant's wife's niece is a citizen and resident of Russia. Applicant has never met his wife's niece.⁷ His wife has two friends in Russia and both are also citizens and residents of that country. He stated that his wife was born in Russia and does have lifelong childhood friends there.⁸

After graduating from college in 1996, Applicant went to Russia for the summer to stay with his future spouse and her mother.⁹ Out alone one day, after taking photographs of a railroad bridge, a police car stopped and asked for his identification and papers.¹⁰ He was informed that recently a law had been passed making it illegal to take pictures of strategic objects and places, including bridges, railroads, government buildings, and officers.¹¹ He was taken to a substation for further questioning. He was released, but his camera and passport were taken. He was instructed to report to the Office of VISA and Registration of Foreigners Office the next day, when he was interrogated by the Russian Federal Security Service (RFSS) and asked if he would be willing to work for Russia. He agreed but stated he would not do anything that was illegal.¹² At this meeting, his camera and passport were returned. He was told not to inform Moscow or American Embassies nor his family and friends, including the U.S. government, about the meeting.¹³ After this incident, he stayed in Russia for another three to four weeks. He was not contacted again by the RFSS while in Russia or back in the U.S.¹⁴ He stated this about why he agreed to work for the RFSS:

If I say [sic] no, then things could have gotten – potentially could have gotten worse for my wife and family that I had living there at the time, namely my mother-in-law and brother-in-law, who have since passed away.¹⁵

⁶*Id.* at 13.

⁷*Id.* at 14.

⁸*Id.* at 14.

⁹*Id.* at 15, 38.

¹⁰Ex. 2 (Applicant's Statement, signed on December 14, 1999) at 3.

¹¹*Id.*

¹²*Id.*

¹³Tr. 16, 28; Ex. 2, note 11, *supra*, at 4.

¹⁴Ex. 2, note 11, *supra*, at 5.

¹⁵From September 2000 to September 2001, Applicant's mother-in-law lived with him and his wife in the U.S. Ex. 3 (Questionnaire for Public Trust Positions, signed on June 12, 2002, Attachment: Foreign Born Relatives and Statements).

Applicant falsified material facts on a SF 86, executed by him on January 7, 2004, in response to Question 14 (*Your Foreign Activities – Contact with Foreign Government*, ” which asks: “have you every had any contact with a foreign government, its establishments (embassies or consulates), or its representatives, whether inside or outside the U.S., other than on official U.S. Government business?” (Does not include routine visa applications and border crossing contacts.). He answered “yes” and disclosed in the remarks section that between July 1, 1996 and September 1, 1996, he had contact with the Russian Federation, Russia, in the following manner: “Travel visa to Russia for June 96 until October 1996: Stayed with my future wife, [name], an [sic] her mother, [name]. While visiting, I was detained and questioned by the local militia [sic]/Police and the Federal Security Service because of some photographs, which I had of a railroad bridge.” He deliberately omitted, in an attempt to mislead, the material facts that he was asked by the Russian Federal Security Service if he would be willing to work for them and that he agreed to do so.

Applicant falsified material facts on a SF-86, executed by him on January 7, 2004, in response to Question 14 (*Your Foreign Activities – Contact with Foreign Government* which asks: “have you every had any contact with a foreign government, its establishments (embassies or consulates), or its representatives, whether inside or outside the U.S., other than on official U.S. Government business?” (Does not include routine visa applications and border crossing contacts.). He answered “yes” and disclosed in the remarks section that between July 25, 1996 and September 1, 1996, he had contact with the Russian Federal Security Service, Russia, in the following manner “Detained by FSB for taking pictures of a railroad bridge.” He deliberately omitted, in an attempt to mislead, the material facts that he was asked by the Russian Federal Security Service, if he would be willing to work for them and that he agreed to do so.

The U.S. and Russia were formerly adversaries in the Cold War. While relations between the countries improved after the fall of the Soviet Union in 1990, there are issues that remain contentious, including Russia’s support of the Iranian nuclear program. Russia has assisted the U.S. in mediating international conflicts and is an ally in the war on terrorism. While its human rights record has improved since the demise of the Soviet Union, violence and human rights abuses are again on the rise. The U.S. State Department cautions Americans traveling to Russia that there remains a heightened potential for terrorist attacks, although Americans are not being specifically targeted.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person’s eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome

determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹⁶ The Government has the burden of proving controverted facts.¹⁷ The burden of proof is something less than a preponderance of evidence.¹⁸ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.¹⁹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰

No one has a right to a security clearance²¹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²³ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁴ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Foreign Influence

Under Guideline B, a security risk may exist for an individual with divided loyalties or foreign financial interests. While Russia’s human rights record has improved since the demise of the Soviet Union, violence and human rights abuses are again on the rise. The U.S. State Department cautions

¹⁶ISCR Case No. 96-0277 (July 11, 1997) at 2.

¹⁷ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

¹⁸*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁹ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

²⁰ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

²¹*Egan*, 484 U.S. at 531.

²²*Id.*

²³*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁴Executive Order 10865 § 7.

Americans traveling to Russia that there remains a heightened potential for terrorist attacks. Applicant's wife is a citizen of Russia. Consequently, Foreign Influence Disqualifying Condition ¶ 7(d) (*sharing 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*) applies.

Applicant's wife visited Russia while her mother was alive. Applicant's wife has a niece and friends living in Russia. Applicant's wife, friends, and niece could be exploited by the Russian government. They all could potentially pose a potential security threat and are in a position likely to create a heightened risk of exploitation by the Russian government. Consequently, Foreign Influence Disqualifying Condition ¶ 7(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*) applies.

In response to a question on his 2004 SF 86 dealing with contact with a foreign government, Applicant deliberately omitted information, in an attempt to mislead, the material facts that he was asked by the Russian police if he would be willing to work for them and he agreed to do so. Thus, ¶ 7(g) (*unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service*), ¶ 7(h) (*indications that representatives or nations from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion*), and ¶ 7(i) (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*) apply. None of the available Foreign Influence Mitigating Conditions apply. Accordingly, allegations 1.a through 1.d of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. While visiting Russia, Applicant was asked by the Russian police if he would be willing to work for them, and he agreed to do so. However, he intentionally omitted those material facts on two questions on his 2004 SF 86. Thus, Personal Conduct Disqualifying Conditions ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar for used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) and ¶ 16 (e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group*) apply. None of the available Personal Conduct Mitigating Conditions apply. Accordingly, allegations 2.a through 2.c of the SOR are concluded against Applicant.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified

information is clearly consistent with national security must be resolved in favor of the national security. Based on his past conduct, Applicant cannot be trusted to resolve any conflict of interest with his wife, a citizen of Russia, her niece and friends living in Russia, in favor of the U.S. Moreover, he agreed to work for the Russian police in order to protect them. He omitted material facts about his activity in Russia on his SF 86. I conclude Applicant has not mitigated the potential security concerns arising from foreign influence and personal conduct. I find that it is not clearly consistent with the national interest to grant a clearance to Applicant.

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 (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

DECISION

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

Jacqueline T. Williams
Administrative Judge