

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Russia. She currently works for a defense contractor as a test engineer. In 1994, she married an American in the U.S. She became a naturalized U.S. citizen in 2000. Her mother, half-brother, stepfather, and aunt are citizens and residents of Russia. Applicant visited Russia in 1993, 1996, 1998, 2001, and 2002. Applicant has mitigated the foreign influence security concerns. Clearance is granted.

CASENO: 06-22144.h1

DATE: 07/31/2007

DATE: July 31, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-22144
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

William F. Savarino, Esq.

SYNOPSIS

Applicant was born in Russia. She currently works for a defense contractor as a test engineer. In 1994, she married an American in the U.S. She became a naturalized U.S. citizen in 2000. Her

mother, half-brother, stepfather, and aunt are citizens and residents of Russia. Applicant visited Russia in 1993, 1996, 1998, 2001, and 2002. Applicant has mitigated the foreign influence security concerns. Clearance is granted.

STATEMENT OF THE CASE

On December 2, 2004, Applicant executed a Security Clearance Application (SF 86).¹ On December 5, 2006, 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) 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 December 12, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on April 17, 2007. On April 30, 2007, Applicant's attorney filed a Notice of Appearance. A Notice of Hearing was issued on May 1, 2007, scheduling the hearing for May 8, 2007.³ The hearing was conducted as scheduled. At the hearing, the Government offered one exhibit, Ex. 1. Applicant offered 16 exhibits, Exs. A-Q. All exhibits were admitted into the record without objection. Prior to the hearing, the Government submitted nine documents about Russia for administrative notice. The transcript (Tr.) was received on May 18, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations under subparagraphs 1.a through 1.f. Those admissions are incorporated herein as findings of fact. 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 was born in Russia. She is 39 years old and works as a test engineer for a defense contractor.⁴ Since 2000, she has worked in the computer field for other contractors. She received her bachelor's degree from a state university in Russia.⁵ In 1992, she immigrated to the U.S. to pursue a graduate degree in international business. In Russia, she worked as an interpreter and translator for a small consulting company that had clients in the U.S. The company sponsored her trip to the U.S. to continue her graduate education.⁶ She received her master's degree in 1996 from a well-known

¹Ex. 1 (Security Clearance Application, dated December 2, 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).

³Applicant waived the 15-day notice rule. Tr. 9.

⁴Tr. 34.

⁵*Id.* at 29.

⁶*Id.* at 26.

university.⁷ Her husband is a U.S. citizen and they married in December 1994 in the U.S.⁸ They met in graduate school. In April 2000, she became a naturalized U.S. citizen.⁹ They adopted their son from a Russian orphanage in 2002, and he is an American citizen.¹⁰ Her son is not a dual citizen of the U.S. and Russia. Applicant traveled to Russia in 1993, 1996, 1998, 2001, and 2002.

Applicant's mother is 62 and a citizen and resident of Russia. She lives in a remote area of Russia, where she owns a small flat.¹¹ Her mother is a medical doctor and was trained as a pediatrician. Her mother is the chief of staff or managing doctor at an orphanage, which is run by the local government, receiving subsidies from the federal budget.¹² Over the years, her mother placed more than 500 children with American families and received a letter from the U.S. Embassy last year "thanking her for helping American families adopt children."¹³ Her mother makes approximately \$500 a month and often does not get paid regularly.¹⁴ Her mother visited the U.S. in 1999 and Applicant opened a joint bank account with her. Applicant stated this about their joint account: "When tough times come, I basically force her to make small withdrawals so she could survive."¹⁵ She talks weekly to her mother by telephone.¹⁶

The SOR alleges that Applicant sends her family in Russia approximately \$200 to \$300 about six to eight times per year. She stated that her support to her mother averages about \$2,000 annually.¹⁷ At times, her mother uses the money to purchase boots, mittens, or coats for the children in the orphanage.¹⁸

⁷*Id.* at 28.

⁸*Id.* at 27.

⁹*Id.* at 28.

¹⁰*Id.* at 31.

¹¹*Id.* at 42.

¹²*Id.* at 39-40.

¹³*Id.* at 41.

¹⁴*Id.* at 41-42.

¹⁵*Id.* at 44.

¹⁶*Id.* at 46.

¹⁷*Id.* at 47.

¹⁸*Id.* at 48.

Applicant's stepfather is a citizen and resident of Russia. Her stepfather and mother are no longer married.¹⁹ They divorced when Applicant was in college and the last time she spoke to him was in 1996. She has no idea where he resides.²⁰

Applicant's 35-year-old half-brother is a citizen and resident of Russia. He lives in the same flat with her mother.²¹ He works in the same orphanage with her mother as a computer technician. He also owns a small business that sells pet food.²² She has an estranged relationship with him since their parents' divorce.²³ They rarely communicate by telephone or email. His wife also works at the orphanage as an accounting assistant.²⁴

Applicant's 55- or 56-year-old aunt, her mother's sister, is a citizen and resident of Russia.²⁵ She owns a few retail stores with her husband, selling clothing.²⁶ Applicant might speak to her aunt twice a year.²⁷

Three witnesses testified on behalf of Applicant. One witness is a World War II Bronze Star recipient.²⁸ He hired Applicant in about 1997 as an administrative assistant of an investment fund group where he worked.²⁹ He had daily contact with her during her two and one-half years of employment. He intensely scrutinized her background before he hired her as he had about \$6 billion under management at the height of his career.³⁰ She left because she wanted to move into a more professional career. After leaving, they continue to see each other socially.³¹ He believes that she is loyal to the U.S. and that she should be granted a security clearance. He stated this about her credibility and character:

¹⁹*Id.* at 56.

²⁰*Id.* at 57.

²¹*Id.* at 58.

²²*Id.* at 59.

²³*Id.* at 61.

²⁴*Id.*

²⁵*Id.*

²⁶*Id.* at 64.

²⁷*Id.* at 66.

²⁸*Id.* at 80, 78-93.

²⁹*Id.* at 83.

³⁰*Id.*

³¹*Id.* at 85.

Yes, I think she certainly was very valuable to us in the firm, and she is an engaging young woman who had a good personality and gets along well with people, and she showed her discretion during the years that she worked for me.³²

The other two witnesses met Applicant in late 2004 when she started working at their place of employment.³³ They both believe she is honest, loyal, and trustworthy. They endorse her application for a security clearance.

Applicant has a strong attachment to the U.S. She owns a home valued at about \$300,000. She maintains both checking and savings accounts as well as retirement accounts. She is actively involved in her community and her son's activities at school.

The U.S. and Russia were former adversaries in the Cold War. While relations between the countries improved after the fall of the Soviet Union in 1990, there were 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. Russia has an active, recent, and ongoing program targeting the U.S. As of 2005, Russia was the most aggressive collector of and accounted for the majority of the targeting of sensitive and protected U.S. technology. 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.

³²*Id.* at 86.

³³*Id.* at 93-101, 102-106.

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.³⁴ The Government has the burden of proving controverted facts.³⁵ The burden of proof is something less than a preponderance of evidence.³⁶ 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.³⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁸

No one has a right to a security clearance³⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴¹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁴² 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.

Guideline ¶ 6 articulates the Government’s concern regarding foreign influence. “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.”

³⁴ISCR Case No. 96-0277 (July 11, 1997) at 2.

³⁵ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

³⁶*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³⁷ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

³⁸ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

³⁹*Egan*, 484 U.S. at 531.

⁴⁰*Id.*

⁴¹*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

⁴²Executive Order 10865 § 7.

Applicant's mother, half-brother, stepfather, and aunt are residents and citizens of Russia. She has visited her family in Russia at least five times between 1993 and 2002. Applicant has frequent contact and a close relationship with her mother. The relationship with her mother creates a heightened risk of foreign pressure or attempted exploitation because her mother is a resident and citizen of Russia and Russia actively seeks intelligence, classified, and economic information from U.S. businesses. Her close connection to her mother also creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about her desire to help her mother by providing sensitive or classified information. Her relationship with her mother is sufficiently substantial to potentially subject her to a heightened risk of foreign influence or exploitation. Consequently, Foreign Influence Disqualifying Conditions ¶ 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*) and ¶ 7(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*) apply.

Various conditions can mitigate the foreign influence security concerns. The most important mitigating factor is Applicant herself and her total commitment to the U.S. through her employment with major defense contractors for the past seven years. She married an American and they have a home in the U.S. Moreover, she has not sought dual citizenship for her son in Russia. Although her mother and half-brother work for a state-run orphanage, they are in a remote town in Russia and neither one has any affiliation with the Russian government. None of her relatives living in Russia pose a potential security threat or are in a position likely to be influenced by the Russian government. None of them work for the Russian government or are involved in work that might create security issues for the U.S. Russia is a country where there is a heightened risk because of their active intelligence gathering activities aimed at the U.S. Thus, Foreign Influence Mitigating Condition ¶ 8(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.*) applies.

Applicant has such deep and longstanding relationships and loyalties in the U.S. She has lived in the U.S. since 1992. Her husband is a U.S. citizen and her son was born in the U.S. Because of Applicant's deep and longstanding relationships and loyalties in the U.S., she can be expected to resolve any conflict in favor of the U.S. Thus, ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*) applies. Accordingly, allegations 1.a through 1.f of the SOR are concluded in favor of 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. Looking at the whole person, Applicant presents a highly credible case that she would not be influenced by anything contrary to the best interests of the U.S. Her residence in the U.S. for more than 15 years, her marriage to an American, and her career record with several major defense contractors

for more than seven years effectively refute the risk that she would now take any action that would jeopardize U.S. security interests. She has assimilated into U.S. customs and culture and continues to embrace the U.S. as her home. I conclude Applicant has mitigated the potential security concerns arising from her personal ties to Russia. I find that it is 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):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

DECISION

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

Jacqueline T. Williams
Administrative Judge