

KEYWORD: Foreign Influence

DIGEST: Applicant's wife and step-son are citizens of the Ukraine and reside with him in a South American country, where he is employed. Applicant's mother-in-law, father-in-law, and brother-in-law are citizens and residents of the Ukraine. Applicant's contacts with his foreign family members create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Clearance is denied.

CASENO: 06-22398.h1

DATE: 06/29/2007

DATE: June 29, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-22398
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's wife and step-son are citizens of the Ukraine and reside with him in a South

American country, where he is employed. Applicant's mother-in-law, father-in-law, and brother-in-law are citizens and residents of the Ukraine. Applicant's contacts with his foreign family members create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Clearance is denied.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 27, 2006, under the applicable Executive Order<sup>1</sup> and Department of Defense Directive,<sup>2</sup> DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision—security concerns raised under Adjudicative Guideline B (Foreign Influence), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant with a copy of the Directive, and Applicant confirmed receipt of the applicable Adjudicative Guideline.<sup>3</sup> On December 13, 2006, Applicant filed a signed response to the SOR. He requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on February 6, 2007. The FORM contained documents identified as Items 1 through 6. Four official U.S. Government publications containing facts about the Ukraine were appended to the FORM and identified therein as source documents 1 through 4.

An undated copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. On March 5, 2007, Applicant requested an additional 30 days to compile and submit material in response to the FORM. By letter dated March 24, 2007, Applicant forwarded four enclosures, which were, in turn, provided to Department Counsel for review on April 2, 2007. The enclosures were identified as Applicant's enclosures 1 through 4. Department Counsel did not object to the admission of Applicant's four enclosures. On April 12, 2007, the case was assigned to me for a decision. After a careful review of Applicant's four enclosures, I marked them as exhibits (Ex.) A, B, C, and D and admitted them to the record of this case.

## **FINDINGS OF FACT**

In the SOR, DOHA alleged that Applicant's spouse and step-son are citizens of Ukraine and currently residing with him in a South American country (§ 1.a.); that his mother-in-law, father-in-law, and /or brother-in-law are citizens and residents of Ukraine (§ 1.b.); and that Applicant traveled to the Ukraine in at least 2001 and 2003 and resided in Ukraine from August 2004 to approximately October 2005 (§ 1.c.) (Item 1.) In his answer to the SOR, Applicant admitted without qualification SOR

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<sup>1</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

<sup>2</sup>Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

<sup>3</sup>See Record Exhibit 1 at 3.

allegations 1.a. and 1.b. He admitted travel to Ukraine in 2001 and 2003 and residence in Ukraine. He admitted living in Ukraine for approximately one year between 2004 and 2005. However, he stated he resided in Ukraine from approximately August 2004 to approximately August 2005, and not October 2005, as alleged in the SOR. (Item 3.) He provided mitigating information. Applicant's admissions are admitted as findings of fact.

Applicant, a native-born U.S. citizen, is 47 years old and employed as an airplane pilot by a Defense contractor. Between approximately August 2004 and April 2005, he worked as a contractor pilot assisting the U.S. military effort in Iraq, where he was wounded in the course of duty. He is currently working as a contract pilot in support of U.S. operations in a South American country. He holds a security clearance. (Item 1; Item 3; Item 4; Ex. A; Ex. D.)

In about 2001, Applicant became involved with a charitable organization, headed by a retired U.S. military official, dedicated to helping orphaned children in the Ukraine. Applicant traveled to the Ukraine in 2001 and 2003 and spent his time and personal resources in helping Ukrainian orphans. (Ex. D.) From August 2004 until August 2005, Applicant resided in the Ukraine. In February 2005, Applicant married a Ukrainian citizen. (Item 5.)

Applicant shares his household with his wife, a citizen of Ukraine, and her minor son, who is also a citizen of Ukraine. At present, Applicant, his wife, and step-son live in a South American country. (Item 3.)

Applicant's mother-in-law, father-in-law, and brother-in-law are residents and citizens of Ukraine. (Item 3.) Applicant's mother-in-law is retired. On occasion, Applicant wires his mother-in-law unspecified smaller amounts of money to help with her living expenses. Applicant sent his brother-in-law, who works as a waiter in Ukraine, money to purchase a car and start a business. The brother-in-law's business plans did not materialize, and he has promised to return the money to Applicant. (Ex. A.)

Applicant's mother-in-law and father-in-law were divorced in Ukraine in about 1982. (Ex. C.) The record does not identify the father-in-law's occupational status, but it does suggest he has infrequent contact with Applicant's wife. When Applicant's wife asked her father to provide biographical information for Applicant to submit with his answer to the FORM, the father asked for money from Applicant in exchange for his biographical information. Applicant and his wife rebuffed the father-in-law's request. (Ex. A.)

In order to take her minor son with her to Applicant's household in the South American country, Applicant's wife was required to obtain permission from the boy's father in Ukraine. The boy's father wanted money from Applicant in exchange for his signed consent form. Applicant refused to pay the father money, and Applicant's wife's brother persuaded the father to sign the form anyway. (Ex. A.)

Applicant's friend, a retired U.S. military officer, submitted a letter of character reference for him. The friend stated he had known Applicant for over ten years. He praised Applicant's charity work on behalf of Ukrainian orphans, and he attested to Applicant's good character and patriotism. (Ex. D.)

Applicant's wife and step-son possess U.S. immigrant visas issued in March 2006. Applicant has submitted applications for expedited naturalization as U.S. citizens for his wife and step-son. (Item 3.)

I take administrative notice that Ukraine has been independent of the Union of Soviet Socialist Republics since August 24, 1991 and has a parliamentary-presidential system of government. Since achieving independence from the Soviet Union, Ukraine has undergone profound political and economic change as it aspires to become a market economy and a multi-party democracy. (*See* footnotes 1 and 2, FORM at 3.)

Ukraine's October 2004 presidential elections focused international attention on the former regime's electoral fraud and its attempts to intimidate the opposition party. Great numbers of citizens protested the government's conduct in what has come to be known as the "Orange Revolution." While subsequent parliamentary and local elections in March 2006 were in line with international standards, and Ukraine now seeks membership in the World Trade Organization, the European Union, and NATO, the country's relationship with Russia remains difficult and complex. In January 2006, Russia cut off natural gas supplies to Ukraine. Ethnic Russians make up almost one-fifth of the country's population, and many ethnic Ukrainians in the south and east of the Ukraine are Russian-speaking. They support close ties with Russia and are suspicious of Ukrainian nationalism. (*See* footnotes 4, 5, 7, 8, 9, 10, 11, and 12, FORM at 4.)

Ukraine has a poor human rights record. Although Ukrainian law prohibits torture, prisoners are tortured during interrogation. Although arbitrary detention is also outlawed, police arbitrarily detain persons. The Ukrainian Security Service continues to monitor private communications and movements of individuals without warrants, even though such conduct is officially prohibited. (*See* footnotes 13, 14, 15, and 16, FORM at 5.)

I also take administrative notice that Ukraine operates as a cash economy, and money scams including credit card and ATM fraud are widespread. (Source document 3 at 3, 7.) Ukraine does not recognize dual nationality. American citizens entering Ukraine with a Ukrainian passport will be treated as Ukrainian citizens by local authorities. This may include being required to perform mandatory military service. Ukrainians who have immigrated to the U.S. without obtaining proper exit visas from Ukrainian authorities may be subject to civil or criminal penalties and will be required to obtain exit visas before returning to the U.S. (Source document 3 at 6.)

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## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968,

*Access to Classified Information* § 3.1(b) (Aug. 2, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

By Memorandum dated August 30, 2006, the Under Secretary of Defense directed implementation of revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, promulgated December 29, 2005, and effective September 1, 2006, as modified. The revised Adjudicative Guidelines replaced the guidelines published in Enclosure 2 to DoD Directive 5220.6 and Appendix 8 to DoD 5200.2-R, and they apply to all adjudications and other determinations in which a SOR had not been issued by September 1, 2006. Accordingly, since the SOR in this case was issued November 27, 2006, the revised Adjudicative Guidelines apply.

The revised Adjudicative Guidelines set forth personal security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 security clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

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## **CONCLUSIONS**

### **Guideline B - Foreign Influence**

The Foreign Influence Guideline identifies the following security concern: *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.*

This case requires the recognition that Ukraine has thrown off the totalitarian government imposed by the former Soviet Union and is attempting to establish a stable parliamentary form of representative government. Currently, the country is undergoing systemic changes as it attempts to align itself with European countries and interests and balance its continuing reliance upon Russia for basic necessities. Unauthorized governmental surveillance of citizens and other individuals continues. Ukraine's reliance on a cash economy and the country's widespread money scams suggest economic instability and a climate in which the sale of information for money can occur.

Applicant admitted the three Guideline B allegations in the SOR. The facts in this case raise possible security concerns under four Guideline B disqualifying conditions. Applicant has contacts with and has provided financial assistance to his in-laws who are residents and citizens of Ukraine. Additionally, two residents and citizens of Ukraine, his wife's father and his step-son's father, attempted to extort money from Applicant in exchange for information or permission sought by Applicant in furtherance of his request for a security clearance and custody of his step-son. While Applicant did not pay money as demanded, these facts also raise concerns under Disqualifying Condition (DC) 7(a) of Guideline B.<sup>4</sup>

Applicant's wife and minor step-son are citizens of Ukraine. They retain familial relations with Applicant's mother-in-law, father-in-law, and brother-in-law, who are citizens and residents of Ukraine. Applicant, a native-born U.S. citizen, shares his household in a South American country with his wife and step-son. These facts raise concerns under DC 7(b) and DC 7(d) of Guideline B.<sup>5</sup>

Applicant traveled to Ukraine in at least 2001 and 2003, and he resided in Ukraine from approximately August 2004 to August 2005. These facts raise concerns under DC 7(i) of Guideline B.<sup>6</sup>

There are several Mitigating Conditions (MC) that potentially apply to the disqualifying conditions raised by the facts in this case. Applicant could mitigate Guideline B security concerns if he could credibly demonstrate that *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.* MC 8(a). He could also mitigate Guideline B security concerns if the facts credibly show *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*

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<sup>4</sup>DC 7(a) reads: "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."

<sup>5</sup>DC 7(b) reads: "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." DC 7(d) reads: "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."

<sup>6</sup>DC 7(i) reads: "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign group, government, or country."

*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 (MC 8(b)); or 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 (MC 8(c)); or the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority (MC 8(d)).*

Applicant's foreign contacts, travel, and residence in Ukraine were not the result of U.S. government business, and nothing in the record suggests they were approved by a cognizant security authority. Applicant's contacts with his wife and step-son are frequent, on-going, and familial. His relationship with them is one of affection, loyalty, and obligation. They reside together in the same household. Both Applicant's wife and step-son have strong familial ties to residents and citizens of Ukraine, and under the current political and economic conditions in Ukraine, these relationships create a risk for foreign influence or exploitation.

Applicant's contacts with his in-laws in Ukraine, especially his mother-in-law and brother-in-law, are neither casual nor infrequent. He provides periodic economic support to his retired mother-in-law, and he has provided his brother-in-law with money to start and operate a business. Their reliance on him for money could create a risk for foreign influence or exploitation. Additionally, Applicant failed to demonstrate that his relationship with his wife and his and his wife's relationship with her mother, father, and brother do not create a conflict of interest that could be exploited in a way that could force him to choose between loyalty to his wife and her family members in Ukraine and the security interests of the United States. ISCR Case No. 03-15485, at 4-6 (App. Bd. Jun. 2, 2005.) Accordingly, I conclude that MCs 8(a), 8(b), 8(c), and 8(d) are inapplicable.

### **Whole Person Analysis**

The adjudicative process, as defined at E2.2. of the Directive, is "the careful weighing of a number of variables known as the whole person concept" and further requires the consideration of reliable information, favorable and unfavorable, about a person's past and present conduct. The following factors should be considered in evaluating the relevance of an individual's conduct under the whole person concept: "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 voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence." (See Directive, E2.2.1.1 to E2.2.1.9.)

In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), DOHA's Appeal Board stated that an administrative judge's whole person analysis, when Guideline B allegations are involved, must give special weight to situations where an applicant "has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which an applicant . . . made a significant contribution to the national security." The Appeal Board recognized that an applicant's conduct under such conditions can give credibility to his assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

In 2004 and 2005, prior to his marriage, Applicant served as a contractor pilot in Iraq, and he was wounded in the course of duty. Since that time, Applicant has taken on new family responsibilities. Applicant, a native-born U.S. citizen, is an honorable family member who seeks to care for his wife, step-son, and his in-laws, all of whom are citizens of Ukraine. Without minimizing the quality or significance of his prior service, it must be recognized that in carrying out his family responsibilities, Applicant has made choices that could make him vulnerable to coercion, exploitation, or pressure and could cause the compromise of classified information. I have carefully reviewed the administrative record, Applicant's submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guideline B, and I have evaluated Applicant's conduct in light of the whole person concept identified at ¶ E2.2 of Enclosure 2 of the Directive. After doing so, I conclude allegations 1.a. through 1.c. of the SOR against Applicant.

Nothing in Applicant's answers to the Guideline B allegations in the SOR or in the administrative record suggested he was not a loyal American citizen. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that 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." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B:   AGAINST APPLICANT

    Subparagraph 1.a.:   Against Applicant

    Subparagraph 1.b.:   Against Applicant

    Subparagraph 1.c.:   Against Applicant

### **DECISION**

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 or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony  
Administrative Judge