

KEYWORD: Foreign Influence

DIGEST: Applicant is 52 years old and has worked as an airframe mechanic for a federal contractor since 2000. He married in 1995. His wife was a Russian citizen and two years ago became a naturalized U.S. citizen. His parents-in-law are Russian citizens, hold Russian passports, and live in the U.S. with Applicant and his wife and daughter. They have permanent residency status. Applicant's father-in-law served more than 30 years in the Russian Navy and retired at the rank of Captain. He and his wife maintain contact with friends in Russia. Applicant failed to mitigate the security concerns raised under Guideline B, foreign influence. Clearance is denied.

CASENO: 06-22643.h1

DATE: 05/31/2007

DATE: May 31, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-22643
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 52 years old and has worked as an airframe mechanic for a federal contractor since 2000. He married in 1995. His wife was a Russian citizen and two years ago became a naturalized U.S. citizen. His parents-in-law are Russian citizens, hold Russian passports, and live in the U.S. with Applicant and his wife and daughter. They have permanent residency status. Applicant's father-in-law served more than 30 years in the Russian Navy and retired at the rank of Captain. He and his wife maintain contact with friends in Russia. Applicant failed to mitigate the security concerns raised under Guideline B, foreign influence. 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. DOHA issued a Statement of Reasons (SOR) on February 16, 2007, detailing the basis for its preliminary decision—security concerns raised under Guideline B (foreign influence). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive), and the revised adjudicative guidelines approved by the President on December 29, 2005, and implemented effective September 1, 2006 (Guidelines). Applicant answered the SOR in writing on February 22, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on April 11, 2007. With the consent of the parties, I convened a hearing on May 16, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered three exhibits for admission into the record, marked as GE 1-3. The exhibits were admitted into evidence without objections. The Government offered nine exhibits for Administrative Notice. Eight of the exhibits were admitted and marked as Administrative Notice (AN) I-VIII. The exhibit that was not admitted for Administrative Notice was offered as a GE 4 and was admitted into evidence without objection. Applicant testified on his behalf and offered one exhibit, marked as AE A. The exhibit was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 25, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 52 years old and has been employed as an airframe mechanic by a defense contractor since 2000. He holds two federal licenses to maintain and modify aircraft. He served in the Marine Corps from 1973 to 1977 and was honorably discharged.

Applicant's wife was born in Russia. He met her through a magazine advertisement and corresponded with her for approximately a year before meeting her in person in London in 1994, where she was attending a language school. She moved to the U.S. on a fiancé visa in 1995, and they married in October of that year. They moved from the U.S. to Saudi Arabia in 1996 to 2000, where Applicant worked for the Saudi airlines. The four years they lived in Saudi Arabia could not be

counted toward U.S. residency requirements for citizenship. Therefore, his wife had to start the time period upon their return and became a U.S. citizen approximately two years ago. Applicant and his wife have a nine year old daughter. His wife is a 3rd grade school teacher and has received a prestigious honor for her teaching abilities. Applicant visited Russia once in 1998 to meet his in-laws. He hopes to visit St. Petersburg one day.

Applicant's parents-in-law are both citizens of Russia. They maintain Russian passports. They moved to the U.S. in October 2005, to be with their only child and only grandchild. They live with Applicant and his wife and daughter and have permanent residency status. They intend on applying for U.S. citizenship when they become eligible. Neither are employed outside the home, but both assist in teaching their granddaughter Russian and assisting her with her studies.

Applicant's father-in-law served in the Russian Navy from August 1953 to August 1984. He attained the rank of Captain and patrolled Russia's territorial waters. He receives a meager pension from the Russian government of approximately \$50 a month. His wife also receives a \$50 pension from the Russian government. Applicant's father-in-law, while he was on active duty, was an instructor for a period at the Russian Naval Academy. He is active on the Internet and accesses Russian websites. Applicant did not know if his father-in-law communicated by email to friends in Russia. His parents-in-law do receive phone calls from friends living in their former home town. They also telephone the same friends in Russia perhaps once every couple of months. Applicant and his wife are their sole source of financial support.

Applicant's father-in-law is 73 and his mother-in-law is 66. The father-in-law had no siblings. The mother-in-law has one relative, a cousin, with whom she maintains contact. Since moving to the U.S. they have not returned to Russia.

Applicant's wife is very close to her parents and they are very close to their granddaughter. They do not own any property in Russia, nor does Applicant or his wife. He is unaware if his father-in-law held a security clearance while in the Russian Navy.

Russia is a federation with a government that consists of a president, prime minister, and a bicameral legislature.¹ It is a vast and diverse nation that is evolving politically, economically and socially.² Russia has an aggressive, ongoing and recent collection program targeting sensitive and protected U.S. technologies.³ It's collection efforts include targeting multiple U.S. Government organizations and all types of technologies since at least 1997.⁴ Russia has significant intelligence

¹AN II, U.S. Department of State, Country Report on Human Rights Practices-2006-Russia, dated March 6, 2007.

²AN III, U.S. Department of State, Consular Information Sheet, Russian Federation, Dated February 22, 2007.

³AN V, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005, Office of the national Counterintelligence Executive, August 2006, at iii .

⁴*Id.* at 2.

capabilities.⁵ Many of the collection operations are directed at the U.S. in various capacities.⁶ Their collection interests, both militarily and commercially are likely to continue.⁷ In addition to Russia's involvement in collection activities and espionage they also provide certain technology to other countries.⁸ They sell technology for both money and diplomatic influence.⁹ Countries that Russia is involved with providing technology to and support include China, Venezuela, India and Iran.¹⁰

Russia has significant problems involving terrorism and there is a heightened potential for terrorist actions against civilians.¹¹ The U.S. State Department warns that this dangerous situation is likely to continue for some time.¹² Russia also continues to have serious human rights violations.¹³ There is political pressure on the judiciary, intolerance of ethnic minorities, corruption and selectivity in enforcement of the law.¹⁴ Russia's security forces were involved in additional significant human rights problems, including alleged government involvement in politically motivated abductions, disappearances, and unlawful killings.¹⁵ In almost every aspect of the government there appears to be government pressure to limit freedom, including exerting influence over judicial decision, corrupt law enforcement, media restriction including harassment, intimidation and killing of journalists.¹⁶ There is widespread governmental and societal discrimination as well as racially motivated attacks.¹⁷

POLICIES

⁵GE 4, Intelligence Threat Handbook, Centre for Counterintelligence and Security Studies for the Interagency OPSEC support Staff (IOSS), June 2004, at 6.

⁶*Id.* at 4.

⁷*Id.*

⁸AN VI, Current and Projected National Security Threats to the United States, Statement for the Record Before the Senate Armed Services Committee by Lieutenant General Michael D. Maples, U.S. Army Director for the Defense Intelligence Agency, February 27, 2007.

⁹*Id.*

¹⁰*Id.* at 26.

¹¹AN VII, Public Announcement, United States Department of State, October 2, 2006

¹²*Id.*

¹³AN II at 1.

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Id.*

“[N]o one has a ‘right’ to a security clearance.”¹⁸ 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.”¹⁹ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁰ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²¹ “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.²⁵

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.²⁶ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²⁷ The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²⁸

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²⁹ An applicant “as the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant

¹⁸*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁹*Id.* at 527.

²⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²¹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²²*Id.*

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

²⁴Executive Order 10865 § 7.

²⁵*See* Exec. Or. 10865 § 7.

²⁶*See Egan*, 484 U.S. at 531.

²⁷*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁸*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

²⁹*See* Directive ¶ E3.1.15.

or continue his security clearance.”³⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”³¹

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline is set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B-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. interest, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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.

Based on all of the evidence I find the Government established a disqualifying condition under Foreign Influence Disqualifying Condition (FI DC) 7(a) (*contact with a foreign family member,...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*), FI DC 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*), and FI DC 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*) apply.

While family ties with persons in a foreign country are not, as a matter of law, disqualifying under Guideline B, such ties do raise a *prima facie* security concern. This concern is sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance.³²

³⁰ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

³¹*Egan*, 484 U.S. at 531; *see* Guidelines ¶ 2(b).

³²ISCR Case No. 99-0424, (App. Bd. Feb. 8, 2001).

Applicant's case requires the recognition that Russia is a top collector of sensitive technological information and is a leader in industrial espionage against the United States. It's human rights record reflects a government willing to exert its control in questionable, illegal and unacceptable ways to obtain its objectives. These actions threaten U.S. security interests. American citizens with family members who are citizens of Russia could be vulnerable to coercion, exploitation, or pressure.

The Government having established a disqualification, the burden shifted to Applicant to rebut or mitigate the allegations. Applicant's parents-in-law are citizens of Russia and reside with Applicant. His father-in-law spent more than 30 year in the Russian Navy. Those years were characterized as the "cold war," a period of time that the two countries were on the brink of war and global disaster. He taught at the equivalent of the Russian Naval Academy. He and his wife live with Applicant to be close to their daughter and granddaughter. Applicant, his wife and daughter are very close to her parents. Applicant's in-laws maintain contact with friends in Russia. They frequent Russian websites. Applicant's father-in-law's devotion to the Russian Navy and attaining the rank of Captain cannot be discounted as to his loyalty toward his home country. These ties to Russia and Applicant's ties to his in-laws also cannot be discounted, as they create potential vulnerability to coercion, exploitation, or pressure. Although Applicant is a very loyal citizen, his relationship with his in-laws and their relationship with their daughter and granddaughter makes Applicant vulnerable to exploitation. Although the in-laws are permanent residents, the fact remains that they are Russian citizens and have Russian passports. Based on the facts, their familial contact in the United States is limited to Applicant, his wife and daughter. Applicant's ties with his in-laws are constant and close, creating security concerns. After considering all mitigating conditions under Foreign Influence Mitigating Conditions 8(a)-(f), I conclude none of them apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, 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 their acts, omissions, motivations and 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.

In addition to considering the specific disqualifying and mitigating conditions under the guideline, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and 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 extent to which participation was voluntary; (6) the presence or absence of rehabilitation and other permanent 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered all of the evidence, including Applicant's credibility and demeanor while testifying. I considered Applicant's devotion to his family, including his in-laws and his hopes to return to visit Russia one day. I also considered his in-laws' citizen status and intentions, and also his father-in-law's retired status as Russian Navy Captain. Applicant obviously is a loyal American and a devoted family man. His wife has assimilated into the American culture and has become a highly regarded teacher.

After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on foreign influence. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

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
Subparagraph 1.d:	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.

Carol G. Ricciardello
Administrative Judge