



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-05190

Appearances

For Government: Greg Cervi, Esq., Department Counsel
For Applicant: *Pro se*

02/11/2013

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated security concerns regarding foreign influence and foreign preference. Eligibility for access to classified information is denied.

Statement of Case

On September 7, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance. DOD recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended, DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive), and the Adjudicative Guidelines (AGs) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on September 26, 2012, and requested a hearing. The case was assigned to me on November 26, 2012. The case was scheduled for hearing on December 5, 2012. A hearing was held as scheduled. At hearing, the Government's case consisted of two exhibits (GEs 1-2); Applicant relied on two witnesses (including himself) and no exhibits (AEs). The transcript (Tr.) was received December 13, 2012.

Besides its two exhibits, the Government requested administrative notice of ten documents: *Report to Congress on Foreign Economic Collection and Industrial Espionage 2009-2011*, Office of the National Counterintelligence Executive (October 2011); *Unclassified Statement for the Record on the Worldwide Threat Assessment of the US Intelligence Community for the House Select Comm. on Intelligence* (February 2012); Press Release, *Ten Alleged Secret Agents Arrested in the United States*, U.S. Department of Justice (June 2010); Press Release, *Ten Russian Agents Plead Guilty and are to be Removed from the United States*, U.S. Department of Justice (July 2010); Press Release, *Imprisoned Spy Sentenced to 8 More Years Incarceration for Conspiracy to Act as an Agent of the Russian Government and Money Laundering*, U.S. Attorneys Office, District of Oregon (January 2011); *Annual Threat Assessment before the Senate Armed Services Committee*, Defense Intelligence Agency (March 2009); *Unclassified Statement for the Record on Worldwide Threat Assessment of the U.S. Intelligence Community for the Senate Select Committee on Intelligence*, Director of National Intelligence (February 2012); *Worldwide Threat Assessment, Statement before the Committee on Armed Services of U.S. Senate*, Director of Defense Intelligence Agency (March 2011); *Background Note: Russia*, U.S. Department of State (March 2012); *2011 Human rights Report-Russia*, U.S. Department of State (May 2012).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Russia and other security concerns. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Russia's current status.

Summary of Pleadings

Under Guideline B, Applicant allegedly has parents and a grandfather who are citizens and residents of Russia. Under Guideline C, Applicant allegedly exercised dual citizenship with Russia by continuing to maintain and renew valid Russian international and internal passports after becoming a naturalized U.S. citizen.

In his answer to the SOR, Applicant admitted all of the allegations. He explained that his Russian internal passport is a form of identification (ID) in Russia.

Findings of Fact

Applicant is a 32-year-old avionics technician of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born and raised in Russia. He immigrated to the United States in 1998 to pursue technical training, and he became a naturalized U.S. citizen in November 2010. (GEs 1 and 2; Tr. 42-44) Before he could apply for U.S. citizenship, he was required to hold a green card for at least five years. (Tr. 44, 46-47) He obtained his green card in 2006 and held it for five years before he applied for U.S. citizenship. (Tr. 47-48) Applicant received a U.S. passport in the same month he received his certificate of naturalization. (GE 1; Tr. 47, 50)

Applicant completed two years at a local community college and earned an associate of arts degree in December 2003. (GE 1) He earned additional state university credits from an accredited university in 2007. (GE 1; Tr. 45) He has never served in the military of the United States and has no foreign military experience. (GE 1)

In July 2011, Applicant became employed as a field engineer with his current employer and has worked continuously with this firm since his starting date. (GE 2; Tr. 50) He married his first spouse in January 2003 and divorced her in August 2007. (GEs 1 and 2; Tr. 45-46) He has no children from this marriage. Applicant married his current wife in August 2008 and has no children from this marriage. (GEs 1 and 2; Tr. 53) His current wife was born and raised in the Philippines and is a naturalized U.S. citizen. (GE 2; Tr. 70)

After becoming a U.S. citizen, Applicant continued to hold Russian citizenship and maintain valid Russian passports, both international and internal passports. (GE 2; Tr. 51-52) Applicant and his wife traveled to Russia in August 2009 (using their respective Russian and U.S. passports) to visit his family and tour local sites. (GE 2; Tr. 53-54, 71) Now that Applicant is a U.S. citizen, he can travel to Russia on his U.S. passport. Still, he continues to hold both his U.S. and Russian passports and needs his Russian passports to travel to Russia without the need of a visa. (Tr. 62)

To date, Applicant has not renounced his Russian citizenship, because to do so would require his travel to Russia and his completion of a lengthy process. (GE 2; Tr. 60-62) Further, to renounce his Russian citizenship and surrender his Russian passports could endanger his parents and grandfather. (Tr. 61-62, 80-81)

Applicant renewed his internal Russian passport in August 2009. (GE 2) An internal passport is required for travel within Russia and serves as a form of ID. (Tr. 54-58) It is not required to enter and exit Russia. (Tr. 55-56) He keeps his internal Russian passport with his mother for his personal use should he travel to Russia. (Tr. 55) Applicant obtained a Russian international passport in 1998 in anticipation of his immigration to the United States. (GE 2) He renewed it in October 2006 and again in November 2011. (GEs 1 and 2; Tr. 50-5). Passport renewal is required of all Russian citizens. (Tr. 55-57, 60) Applicant expressed a willingness to surrender his Russian passports to his facility security officer (FSO) as a condition to his obtaining a security clearance. (Tr. 59-60) However, he is not willing to surrender them permanently and would expect to have them returned to him should he encounter a family emergency in Russia. (Tr. 59-60)

Applicant has no connections with any agents of the Russian government. (Tr. 40) He has no interest in Russian or U.S. politics. However, he did have limited contact with the Russian consulate of a major U.S. city in 2009 when he applied for a visa for his wife to accompany him to Russia to see his family. (GE 2) And he had contact with the same consulate in August 2011 to initiate the process of renewing his Russian international passport. (GE 2; Tr. 51-52)

Family and personal interests

Applicant has immediate family members who reside in Russia. His mother, father, and grandfather are all citizens and residents of Russia. (GEs 1 and 2; Tr. 61-62, 80-8) Applicant desires to retain his Russian citizenship and passports out of the respect he holds for his family as well as for travel convenience. (Tr.62-63, 73-85) He communicates frequently with his mother (weekly or biweekly) and not at all with his father, who is separated from his mother. (Tr. 64-66) His mother works for a children's health clinic. (Tr. 65) He maintains annual contact with his grandfather. (Tr. 66) Both his father and grandfather served in the Russian military. (Tr. 66-67) Applicant has no contacts with old friends who served in Russia's military service.

Applicant has no property interests or inheritance expectancies in Russia. (Tr. 63-64) By contrast, he owns a home in the United States, which he purchased in 2008. (Tr. 68) He has a mortgage on the home of approximately \$115,000. (Tr. 69) He has a 401(k) retirement account worth approximately \$40,000. (Tr. 68) And he maintains a U.S. checking account. (Tr. 70) Applicant is registered with the Selective Service and is willing to take up arms for the United States wherever the need and whoever the adversary might be. (Tr. 72)

Russian background information

The Russian Federation is a vast and diverse nation that is composed of 21 republics and covers almost twice the area of the United States. (*Background Note: Russia, supra*, at 2-3) It has a population base of 143 million people, which is multinational in scope and encompasses more than 100 ethnic groups. (*id.*)

Historical antecedents

Russia enjoyed its first burst of modernization and European influence under Peter the Great's reign (1689-1725) Peter created Western-style military forces, reformed government institutions, and established the beginning of an enlightened education system. (*Background Note: Russia, supra*, at 5) Catherine the Great continued Peter's expansionist policies and established Russia as a formidable European power. She is credited with consolidating political power during her reign (1762-1796). Known for her interest in art and literature, her reign became known as a period of enlightenment in Russian culture. (*id.*)

By the turn of the 19th century, the reigns of the Alexanders had left Russia in imperial decline. (*Background Note: Russia, supra*, at 5-6) The Russian revolution of 1905 forced Tsar Nicholas II (1894-1917) to approve a constitution and introduce limited democratic reforms. (*id.*, at 6)

The lingering after effects of WW I, combined with internal pressures, sparked the March 2017 uprising that led to Tzar Nicholas II's abdication of the throne and subsequent murders of him and his family. ((*Background Note: Russia, supra*, at 6-7) The Bolshevik revolution (led by Vladimir Lenin) that ensued ended with the Bolshevik's seizure of control of Russia in November 1917 and ushered in civil war in 1918 between Lenin's Red Army and the various White forces. (*id.*, at 6) With the Bolshevik's empowerment came Russia's assimilation of its neighboring Baltic states and the formation of the USSR in 1922. (*id.*)

With growing pressures from the West after WW II and internal demands from the Russian people for reforms, the old Soviet Union collapsed in 1991 and was replaced by a Russian Federation. (*Background Note: Russia, supra*, at 7-8) Following a series of structural changes that were instituted, a Russian constitution was created in 1993. See *id.*, at 10; *2011 Human Rights Report-Russia, supra*, at 1.

Today's Russia is a federation that disburses power between the central government and still evolving regional and local autonomies. Under its 1993 constitution, a centralized political system was created that concentrates executive power in a president and a prime minister. (*Background Note: Russia, supra*, at 8-9; *2011 Human Rights Report-Russia, supra*, at 1-2) Its federal assembly consists of a lower house (State Duma) and an upper house (Federation Council) Russia's judiciary is generally considered to be weak and lacking in the independence typically found in Western-style democracies. Russia retains a powerful military and remains a nuclear superpower.

Administration of justice and human rights issues

Russia's human rights record remains uneven and poor by Western standards. (*Background Note: Russia, supra*, at 10; *2011 Human Rights Report-Russia, supra*, at 5-7; *Administrative Notice, supra*, at 3) Although Russia recognizes the legitimacy of internationally recognized human rights standards, implementation of procedures to

safeguard these standards in Russia have been slow to gain traction. (*id.*) Prison conditions in Russia entail extreme over crowding and harsh treatment of prisoners. Prisoners generally enjoy poor nutrition and deficient access to quality health and medical care. These conditions have only recently been addressed with the use of prison monitors and to date have produced mixed results. (*id.*)

Under Russia's political system, security forces generally report to civilian authorities. But because of the violence and civil unrest in areas of the Northern Caucasus, problems occurred with civilian-controlled security forces in this area. (*id.*) Respect for the rule of law is particularly lacking in the North Caucasus, which are marked by conflicts between government forces and insurgents, Islamist militants, and criminal forces. Conflicts between these groups have resulted in widespread human rights abuses by security forces and insurgents alike. Issued reports allege killing, torture, physical abuse, and politically motivated abductions by these forces. (*2011 Human Rights Report-Russia, supra*, at 1-5)

Although there is a general risk of U.S. citizens being subjected to indiscriminate acts of terror in Russia, there is no current indication that Americans are singled out as targets. See *Background Note, Russia, supra*, at 10. Terrorist activity in Russia includes suicide bombings and hostage taking, especially in connection with the Chechen conflict. See *Human rights Report-Russia, supra*, at 14-15. Russian human rights abuses in the Chechen conflict included torture, summary executions, use of indiscriminate force, and arbitrary detentions.

Besides problematic behavior in the Chechen conflict, Russian authorities engage in electronic surveillance, arbitrary arrest and detention, as well as torture and abuse to gain confessions. (*2011 Human Rights Report-Russia, supra*, at 2-14) Officials have illegally employed electronic surveillance, monitored internet, telephone, and email communications, and entered residences without a warrant. (*id.*) Other reported human rights problems in Russia include Government pressure and censoring of the media, restrictions on freedom of expression, violence against women and children, trafficking in persons, hate crimes, and civil intimidation. (*id.*, at 2, 17-33)

There is widespread government corruption in Russia, which complicates sustaining efforts to improve Russia's justice system and promote respect for the rule of law. (*2011 Human rights Report-Russia, supra*, at 26-27) To its credit, the Russian legislature has passed a series of reforms in Russian criminal procedure laws, making their law more consistent with Western standards. Russian human rights practice has improved in some areas, but not in others. It's overall human rights record remains poor. (*id.*, at 1-2)

Russian collection practices

By 2005, Russia and China were recognized as the two most aggressive collectors of sensitive and protected U.S. proprietary technology and accounted for the bulk of foreign collection practices. Russia has an active, ongoing collection program

targeting sensitive U.S. industrial and military technology as well as commercial and dual-use technology. See *Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011, supra*, at 1-2. Russia remains one of the top three most aggressive and capable collectors of sensitive U.S. economic information and technologies, especially in cyberspace. See *id.*; *Worldwide Threat Assessment of the U.S. Intelligence Community, supra*, at 8; *Worldwide Threat Assessment, Statement before the Committee on Armed Services of U.S. Senate, supra*, at 11; and *Administrative Notice, supra*, at 1-2. Russia also targets national security and environmental researchers as well as signal intelligence. Russia provides technology to other countries that has the potential for use in the construction of weapons of mass destruction, biotechnology, and missiles. See *Annual Threat Assessment, supra*, at 19, 22, and 29-30.

In June 2010, the U.S. Department of Justice announced the arrest of ten alleged secret service agents for carrying out long-term, deep-covered assignments on behalf of Russia. The defendants in the criminal case arising from the arrest pled guilty and were immediately expelled from the United States. See *DOJ Press Release covering guilty pleas of ten Russian agents, supra*. In January 2011, a convicted spy and former CIA employee was sentenced to an additional prison term because of money laundering and conspiracy to act as a Russian agent for passing information to the Russian government between 2006 and 2008. See *U.S. Attorney's Press Release, supra*.

U.S.-Russia relations

By the end of 2008, in the wake of the Russian-Georgian war, U.S.-Russia relations were at a ten-year low and were characterized by mutual distrust and adversarial drift. (*Background Note, supra*, at 18) The resetting of U.S. relations in 2009 offered opportunities for the creation of a new START treaty, which was completed and entered into force in February 2011. (*id.*) The Bilateral Presidential Commission established in July 2009 offered fresh reset opportunities as well: Its aims were directed at improving coordination between the two countries in a number of important areas of strategic interest. (*id.*) And the two countries continue to work closely on initiatives designed to address threats of nuclear terrorism. See *id.*, and *Worldwide Threat Assessment, Statement before the Committee on Armed Services of U.S. Senate, supra*, at 7-8.

Since gaining its independence in 1991, Russia has worked together with the United States more frequently to promote global trade liberalism. (*Background Note, supra*, at 14) Russia has demonstrated vital interests in U.S. economic, trade, and investment policies, and has worked closely with the United States to gain ascension in the World Trade Organization (WTO) and other pursuits in promoting their trade liberalization agendas. (GE 7)

To be sure, commercial transactions in Russia are complex and protracted. Some of this is due to its body of overlapping, rapidly changing laws, decrees, and regulations. (*id.*) And some is due to uneven implementation of these laws, decrees, and

regulations in the regional and local courts that lack independence and are subject to political pressures and corrupting influences. (*id.*)

After hitting trade lows in 2009, trade has picked up between the United States and Russia and grew to \$31.7 billion in 2010. (*Background Note, supra*, at 16) Increased imports from Russia in 2009-2010 can be attributable to nascent economic recovery in the United States and the rising price of oil and other commodities in both countries. Oil represents over two-thirds of the value of U.S. imports from Russia (*id.*) Anchored by a bilateral Russia-U.S. World Trade Organization (WTO) agreement completed in 2006, Russia and the United States have worked on a range of liberalizing trade reforms designed to streamline and promote their trade liberalization agendas. (GE 7; *Background Note: Russia, supra*)

Negotiations over meeting WTO ascension requirements have been difficult and required the assimilation of restrictive Russian trade policies into alignment with internationally accepted trade policy practices. (*id.*) Successful Russian ascension into the WTO will enable Russia to lower its import duties and limit its export fees, and increase access to U.S. and European companies. Still, there is much groundwork to complete before Russia and the United States can claim the full benefits of liberalized trade. Russia must clamp down on corruption, reduce bureaucracy, and improve its demonstrated respect for the rule of law. (*id.*)

Russia and the United States are frequently aligned on political initiatives and have joined in numerous international agreements, including efforts to resolve international political problems at the United Nations. Russia and the United States are allies in the war on terrorism, and both seek to suppress the proliferation of weapons of mass destruction. Both countries have specially emphasized the reduction of strategic arsenals. Since 1992, the United States has spent over \$7 billion in Cooperative Threat Reduction (CTR) (or Nunn-Lugar) funds and related programs to help Russia dismantle nuclear weapons and ensure the security of its nuclear weapons, weapons grade material, other weapons of mass destruction, and related technical know-how. (*id.*) The CRT program was renewed in 2006 for seven years and comes up for reassessment in 2013.

Still, there continues to be profound policy differences between the United States and Russia. (*Background Note, supra*, at 18-19) Unresolved conflicts of the Caucasus and the fragility of some Central Asian states represent the most likely flash points in the Eurasia region. Russian occupation and military presence and expanded economic ties to Georgia's separatist regions of South Ossetia and Abkhazia continue to create tensions between the United States and Russia.

Russia and China continue developing systems technologies that can interfere with or disable vital U.S. space-based navigation, communication, and intelligence collection satellites. (*Worldwide Threat Assessment of the U.S. Intelligence Community, supra*, at 20). Cyber attacks against the United States continue to increase in number and sophistication, and Russia remains a primary sponsor of cyber attacks against U.S. military installations and interests. (*Worldwide Threat Assessment, Statement before the*

Committee on Armed Services of U.S. Senate, supra, at 1) Russian intelligence and security services continue to target DOD interests in support of Russian security and foreign policy. (*id.*) And Russia is not expected to support additional sanctions against Iran. (*Worldwide Threat Assessment of the U.S. Intelligence Community, supra*, at 20)

Travel restrictions in Russia

U.S. citizens visiting Russia must always possess a valid passport. (*2011 Human rights Report-Russia, supra*, at 22; GE 2) U.S. citizens who are former Russian citizens may be viewed by Russian authorities as Russian citizens and not allowed to exit Russia except on a Russian passport. Males who are considered Russian citizens may encounter problems if they did not satisfy Russian military requirements prior to leaving for the United States. (*Id.*)

Endorsements

Applicant is well regarded by his supervisor who knows him and has had the opportunity to work with him. (Tr. 29) His supervisor holds a security clearance and has Air Force military experience. (Tr. 31) He characterizes Applicant as conscientious, reliable, and trustworthy. (Tr. 30-32)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in reaching at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments about whether the applicant is an acceptable security risk. When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: When an individual acts in such a way as to indicate preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. See AG ¶ 9.

Foreign Influence

The 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. See AG ¶ 6.

Burden of Proof

Under the Directive, a decision to grant or continue an applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance.

Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a well regarded avionics technician who immigrated to the United States in 1998 and acquired U.S. citizenship in November 2010. When he became a U.S. citizen he acquired a U.S. passport. However, he retained his Russian passports and declines to surrender it unconditionally to his FSO or authorized authorities of the Government. Nor does he express any intention of renouncing his Russian citizenship, citing bureaucratic inconvenience and concerns for his family members who could be subjected to government oversight should Applicant initiate Russian citizenship renunciation procedures.

Trust concerns relate to foreign preference based on Applicant's dual citizenship status with Russia and foreign influence relative to his having immediate family members who are citizens and residents of Russia.

Foreign Preference

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations of acts indicating a preference for the interests of the foreign country (Russia) over the interests of the United States. By electing to retain his dual Russian citizenship and passports after becoming a naturalized U.S. citizen with a U.S. passport for personal and business travel, he shows a split preference for Russia and the United States

Since becoming a naturalized U.S. citizen, Applicant has taken several actions and exercised foreign privileges that reflect active indicia of dual citizenship. He has declined to surrender his Russian passports since acquiring his U.S. passport and he expressed no intention to renounce or consider renouncing his Russian citizenship. Applicant's retaining his Russian passports and citizenship in these circumstances represents material indicia of a preference for Russia that cannot be easily reconciled with the split preference he has shown for many years for his adopted home country of the United States.

Preference questions require predictive judgments about how an applicant can be trusted in the future to honor his fiduciary responsibilities to the Government. Applicant

has worked in the defense industry now for several years and is implicitly aware of the potential risks of working for a U.S. defense contractor while contemporaneously holding dual citizenship and passports. While his choices are understandable, considering his circumstances and presented travel difficulties to Russia without Russian passports and Russian citizenship to support his passports. They also reflect a current and ongoing split preference for the United States and Russia.

Because Applicant elected to retain his Russian passports (both his international and internal ones) while he still holds dual U.S. citizenship and a U.S. passport, the Government may apply certain provisions of disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, “exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This DC includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.

Specifically, DC ¶ 10(a)(1) applies to the established facts and circumstances herein. By retaining his Russian passports, Applicant is able to achieve travel privileges and conveniences not available to other U.S. citizens.

Were Applicant to elect to renounce his Russian and surrender his Russian passports unconditionally, he risks attracting attention to himself and potentially his family members residing in Russia by Russian authorities. This creates a dilemma for Applicant who would like to avoid any bureaucratic exchanges with Russian authorities and retain his Russian passports should he choose to travel to Russia.

Applicant’s election to retain both his Russian citizenship and his Russian passports makes good practical sense and reflects entirely rational and understandable choices on his part. But his elections also reflect split preferences for his newly adopted country of the United States and his birth country of Russia.

Because Applicant's dual citizenship status is based on his parent's citizenship, he may claim the benefits of MC ¶ 11(a), "dual citizenship is based solely on parent's citizenship or birth in a foreign country." However, he has declined to surrender his Russian passports unconditionally in accordance with established procedures for surrendering a foreign passport to a cognizant security authority of the Russian government. As a result, he may not claim the benefits of MC ¶ 11(e), "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated." None of the other covered mitigating conditions are available to Applicant under the facts presented.

Whole-person precepts are certainly helpful to Applicant in surmounting the Government's preference concerns herein. The positive trust impressions he has forged with his supervisor, who has worked with him for the past year, add support to his claims that during his years of steady employment with U.S. firms he has demonstrated loyalty and preference for the United States.

Overall, though, Applicant is not able to persuade that his current preference is solely with the United States. Because he made considerable use of Russian privileges associated with his renewing his Russian passports, he manifested some preference for Russia under the criteria as established by the Appeal Board. Applicant fails to absolve himself of foreign preference concerns associated with the presented issue of whether he retains a preference or split preference for his birth country (Russia), or his adopted country (the United States). Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a and 2.b of Guideline C.

Foreign Influence

Applicant and his family have deep roots in Russia. Determined to make a new life for himself in the United States, he immigrated to the United States and became a naturalized U.S. citizen in November 2010. Still, he is committed to retaining his Russian citizenship and Russian passports. And his mother, father, and grandfather are Russian citizens and residents. He maintains close contact with his mother and grandfather, but not his father. On balance, his contacts with his family members residing in Russia remain close.

Historically, Russia has a mixed record as a sometimes ally and sometimes adversary of the United States. Since gaining its independence in 1991 with the collapse of the old Soviet Union, Russia has increased its trade relationships with the United States. With its ascension to the WTO, Russia promises to increase its investment and trade opportunities for the United States and its investors. But Russia has a checkered human rights record that includes torture, use of indiscriminate force, and arbitrary detentions. Russian authorities have employed illegally employed electronic surveillance, monitored internet, telephone and email communications, and entered residences without a warrant. (*id.*) Other reported human rights problems in Russia include Government pressure and censoring of the media, restrictions on freedom of expression, violence against women and children, trafficking in persons, hate crimes, and civil

intimidation. And there is widespread government corruption in Russia as well as a history of aggressive collection practices against public and private U.S. institutions.

The Government urges trust concerns over risks that Applicant's family members in Russia could be subjected to pressures or compromise to enlist their help in eliciting classified information from Applicant. Because Applicant has dual Russian citizenship and Russian passports, he can freely travel to Russia. And he possesses special skills and experience that could conceivably place himself and his Russian family members in harm's way. Both he and his family might be subject to undue foreign influence and pressure by Russian authorities to access sensitive proprietary information in Applicant's possession or control. As such, he presents a potential heightened security risk covered by disqualifying condition (DC) ¶ 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," of the AGs for foreign influence.

Applicant's special access through his holding of Russian citizenship and Russian passports, combined with his own demonstrated split-preference for the country, pose some potential concerns for him because of the risks of undue foreign influence that could potentially affect his relationships with his family members in Russia. Considering Russia's poor human rights record and history of aggressive collection practices, Applicant's family members residing in Russia could pose heightened security risks.

Because of the considerable contacts Applicant maintains with two of his family members residing in Russia (both his mother and grandfather), consideration of DC ¶ 7(b), "connection 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," is warranted herein.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Russia. The AGs do take into account the country's demonstrated relations with the United States as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

Based on his case-specific circumstances, MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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." is

not fully available to Applicant. For so long as he retains his Russian citizenship and passports, Applicant's family members pose some risk that could subject him to potential pressures and influence from Russian government and military officials.

Nor is MC ¶ 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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," fully available to Applicant. Despite his assured loyalties and commitments to the United States, Applicant's family ties and own ties to Russia are still too strong to enable him to neutralize all security concerns associated with his Russian family relationships.

MC ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation," has little application to Applicant's situation. MC ¶ 8(f), "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual," has some application. Applicant has no property or financial interests in Russia and no inheritance expectancy in that country that could expose him to potential conflicts.

Unavailable to Applicant is MC ¶ 8(e), "the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country." Applicant has had no contracts or business interests in Russia to report to his FSO or cognizant U.S. officials.

All told, Applicant's family links and contacts in Russia are still considerable and pose heightened risks of pressure, coercion, and influence that could be brought to bear on Applicant and his family members residing in Russia. Despite encouraging bilateral trade and investment relationships between the United States and Russia, Russia still presents heightened security risks that cannot be mitigated at this time.

Whole-person assessment is available to minimize Applicant's exposure to any potential conflicts of interests with Russian government officials. His supervisor who has worked closely with him, considers him very reliable and trustworthy. But he acknowledges potential risks to these family members should he initiate citizenship renunciation and passport surrender.

Overall, any potential security concerns attributable to Applicant's having family members residing in Russia are insufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand any Russian risks of undue influence. Unfavorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG ¶ 2(a).

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B:	AGAINST APPLICANT
Subpara. 1.a	Against Applicant
GUIDELINE C:	AGAINST APPLICANT
Subparas. 2.a and 2.b:	Against Applicant

Conclusions

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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

