



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



In the matter of: )  
)  
) ISCR Case No. 12-05839  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

04/25/2013

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant emigrated from his native Russia to the United States in 1990. Since becoming a naturalized U.S. citizen in June 1996, Applicant has traveled to Russia several times, including in 2012, to visit his sister and sister-in-law. On trips through 2007, he has also visited with close friends from his youth in a Soviet military school or from his service as an officer in the Soviet Army. Applicant and his spouse bought her parent’s apartment in Russia in 2003. Applicant is committed to his life in the United States, and he has no allegiance to Russia. Yet, his close family ties and ongoing friendships in Russia raise foreign influence concerns that are not fully mitigated. Clearance denied.

**Statement of the Case**

On October 1, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and explaining why it was unable to grant a security clearance to Applicant. The DoD acted 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 (AG) effective within the DoD on September 1, 2006.

Applicant responded to the SOR on October 31, 2012, and he requested a hearing. On February 8, 2013, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I scheduled a hearing for February 28, 2013.

At the hearing, two Government exhibits (GEs 1-2) were admitted without objection. Applicant and his supervisor testified, as reflected in a transcript (Tr.) received on March 8, 2013. At the Government's request, and over some expressed concerns from Applicant about the relevance of the information to his case, I agreed to take administrative notice of several facts pertinent to the Russian Federation (Russia) and its foreign relations, including with the United States.<sup>1</sup>

On March 20, 2013, Applicant requested that the record be reopened for him to correct his hearing testimony concerning travel to Russia. He also proposed corrections to the hearing transcript, many of which were accepted.<sup>2</sup> On March 22, 2013, I granted Applicant until April 5, 2013, to submit additional evidence. On April 1, 2013, Applicant submitted four Applicant exhibits (AEs) A through D. On April 2, 2013, Department Counsel indicated he had no objections to their admission. Accordingly, they were accepted into the record as full exhibits.

### **Summary of SOR Allegations**

The SOR alleged under Guideline B, foreign influence, that Applicant became a member of a communist youth organization in 1958; joined the Soviet military on his

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<sup>1</sup>The Government's request for administrative notice, dated November 26, 2012, was received on February 21, 2013. The request for administrative notice was based on a report from the Office of National Counterintelligence, *Report to Congress on Foreign Economic Collection and Industrial Espionage 2009-2011*, dated October 2011; on statements before House and Senate committees by the Director of National Intelligence in February 2012 and by the Director of the Defense Intelligence Agency in March 2009 and March 2011; on two U.S. State Department publications: *Background Note: Russia*, dated March 19, 2012, and *2011 Human Rights Report: Russia*, dated May 24, 2012; and on three press releases from the U.S. Department of Justice. Two of the press releases concern the June 2010 arrests of ten secret agents of the Russian Federation, and their guilty pleas in July 2010 for conspiracy to act as an agent of a foreign government in the United States without notifying the U.S. Attorney General. The other press release concerns the sentencing in January 2011 of a former U.S. Central Intelligence Agency employee to eight more years in prison for conspiracy to act as an agent of the Russian government and conspiracy to commit international money laundering in the United States. The press releases were presented to substantiate that Russia actively engages in espionage activities against the United States. None of the cases involved Applicant personally or involved espionage through any of his family relationships. The request for administrative notice and source documents were incorporated in the record as hearing exhibit (HE) 1.

<sup>2</sup> The accepted corrections to the transcript are identified in a March 22, 2013 email admitted as hearing exhibit 2.

graduation from a military academy in 1963; graduated from an Armored Forces academy in 1968; served in various posts in the Soviet Army, including with a secret security clearance, until he was granted a medical discharge at the rank of major in 1980 (SOR 1.a); and that in 1970 or 1971, Applicant was asked but declined to join the Soviet Army's main foreign military intelligence directorate, the GRU (SOR 1.b). Also under Guideline B, Applicant's sister (SOR 1.c) and half-sister (SOR 1.d) are Russian resident citizens and received financial support from Applicant in the past, and Applicant's half-sister retired from an institute affiliated with the Russian space program (SOR 1.d). In addition, Applicant allegedly maintains friendships with five Russians: two with former service in the Russian Army (SOR 1.e and 1.f); two who teach at the university level in Russia (SOR 1.g and 1.h), and one who had been a professor but is now a priest in Russia (SOR 1.i). Applicant allegedly also had an association with a graduate and then professor of the Soviet Army's foreign intelligence academy (SOR 1.j). Finally, under Guideline B, Applicant and his spouse purchased her parents' apartment in Russia in 2003 (SOR 1.k).

In his Answer to the SOR, Applicant admitted his mandatory membership in the communist youth organization more than 50 years ago; his military schooling in Russia and service in the Soviet Army; and that he held a security clearance while in the Army more than 30 years ago. Applicant also acknowledged that he had been asked whether he wanted to be placed on the list for the Soviet Army's foreign intelligence academy, but he declined the offer. Applicant did not deny his financial support for his sister and half-sister in Russia, although he denied it could be a source of vulnerability to pressure or coercion from a foreign government, including Russia. Applicant clarified that his half-sister had worked for a research institute that designed materials that could be used in the Russian space program, and not on the space program. Applicant did not deny the friendships with the five Russian resident citizens named in the SOR, including the two friends (SOR 1.e and 1.f) who had been former classmates of his at the Soviet military academy, but he questioned the risk, given none of his friends had ever been affiliated with Russian intelligence. Applicant added that he had not contacted four of the five friends (SOR 1.e-1.g and 1.i) since 2005. As for the other friend, who teaches at an engineering institute in Russia (SOR 1.h), Applicant had not seen him since 2007 or had any telephone contact with him in the last three years. Applicant denied any association with the Russian affiliated with the GRU (SOR 1.j). Although they attended the same military academy, Applicant disliked him. They met only once thereafter, by accident, some 22 years ago. Applicant admitted his joint ownership with his spouse of her parents' apartment in Russia, which they bought for investment purposes only. Applicant indicated that the value of the property had declined to where he could not sell it and realize his initial investment. Applicant denies any involvement in, or knowledge of, any collection or foreign intelligence activity against the United States.

### **Findings of Fact**

Applicant's admissions to his military schooling and service in the then Soviet Army, to his family ties to his sister and half-sister in Russia, to his longtime friendships with five Russian nationals, four of whom still reside in Russia, and to his joint

ownership of an apartment in Russia, are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 68-year-old senior systems engineer, who has worked for his defense contractor employer since August 2010. (GE 1; Tr. 25.) Applicant was granted an interim secret-level security clearance, which was withdrawn without prejudice in April 2012 because of information developed during the adjudication of his security eligibility.<sup>3</sup> (AE C.)

Applicant was born in Russia (then the Union of Soviet Socialist Republics) in 1944 to parents, who had served as officers in the Soviet Red Army during World War II. Applicant's mother had two children from a previous relationship, a daughter born in 1936 and a son born in 1938. (Tr. 56.) Applicant's parents had two children after Applicant, a daughter in 1946 and a son in 1948. Applicant's parents divorced in the early 1960s. His mother died in Russia in 1979. Applicant believes his father is also now deceased. Applicant had limited contact with his father after his parents' divorce. (GEs 1-2.)

At age 10, Applicant began attending a military school, where he met the friend (Mr. V) identified in SOR 1.f. At age 14, Applicant became a member of a communist youth organization, which was mandatory for those with a military affiliation. (Tr. 50-51.) Following their graduation from the school in 1963, Applicant and Mr. V both attended a military academy from July 1963 to June 1968 to prepare for their careers as Army officers. The Russian identified in SOR 1.j also attended the same academy, although he and Applicant were not friends.<sup>4</sup> (GE 2.) In 1967, Applicant became a member of the Communist Party. (GE 2; Tr. 50.) In June 1968, Applicant and Mr. V graduated, Applicant with the equivalent of a master's degree in electrical engineering. Mr. V, who

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<sup>3</sup>At his hearing, Applicant expressed concern about the withdrawal of his interim clearance because of "additional information developed during the adjudication process." (AE B; Tr. 63-64.) Applicant listed his former service in the Soviet military, his contacts with his sister, half-sister, and the close friends identified in SOR 1.e and 1.h, as well as his property ownership in Russia on his security clearance application in July 2010. His interim clearance was granted even before his first interview, which was in August 2010. The details of that interview, including the extent of his disclosure, are not before me for review. Even assuming he was fully forthcoming during his initial interview, the DOD had limited information about Applicant's foreign contacts when it granted him the interim clearance. For example, in October 2011, Applicant updated his foreign travel to include a trip to Russia in August 2010 to visit his sister and half-sister. The Government is not estopped from reconsidering the security significance of past conduct, especially in light of more recent conduct or circumstances having security significance. See e.g., ISCR 08-05344 (App. Bd. Feb. 3, 2010); ISCR 09-00206 (App. Bd. May 10, 2010); and ISCR 06-10859 (App. Bd. Sep. 2, 2010). Applicant questions why he should be held responsible 2.5 years later for someone's mistake in granting him an interim clearance, especially when he relied in good faith on that clearance grant in accepting his current job. Security clearance determinations are based on whether or not grant of security eligibility is clearly consistent with the national interest.

<sup>4</sup>Applicant indicated in his October 2011 affidavit that after this Russian graduated from the GRU academy, he was rumored to attend a doctorate program at the GRU academy and then become a professor at the academy. At the time of Applicant's farewell party in November 1990, the Russian identified in SOR 1.j had already retired from the military at the rank of colonel. (GE 2.)

was on a scientific track in mechanics, earned his doctorate degree and worked in one of their alma mater's laboratories before retiring from the Russian military at the rank of lieutenant colonel in 2000 or 2001. (GEs 1, 2; Tr. 59.) Mr. V was also a member of the Communist Party when he was in the military because it was required, although Applicant believes Mr. V has left the Party. (Tr. 89.)

In June 1967, Applicant married his first wife. (GEs 1-2.) Her father was a colonel who headed the political department of a military academy in Russia before his retirement in 1973 or 1974. Applicant's then father-in-law worked closely with the KGB representative at the academy because he was required to enforce Communist Party regulations. (GE 2.)

Applicant did not have any intelligence duties in the Soviet Army. In the early 1970s, Applicant was approached by a recruiter for the GRU, the Soviet military intelligence agency, with an offer to attend its academy. Applicant was initially "tempted," but he declined the offer because he had been accepted into a doctorate program at a military artillery academy, his marital relationship was deteriorating, and he was becoming "more and more disgruntled with the communist regime." His goal was to become a professor at the military academy. Applicant believes he was targeted because of his military background from his youth and his degree in electrical engineering. (GE 2; Tr. 52, 62-63.)

Around 1974, Applicant began an extramarital affair with his current spouse, who was a practicing physician. (Tr. 86.) On learning about the affair, Applicant's then father-in-law threatened to end Applicant's military career should Applicant divorce his daughter. (GE 2.) In July 1977, Applicant and his first wife divorced. (GEs 1-2.) Applicant married his current spouse in November 1978. He became a stepfather to her then 11-year-old son from her previous marriage. The boy's father left Russia for the United States in 1979 and subsequently remarried. (GE 2; Tr. 68.)

Applicant was denied permission to proceed with defense of his thesis, which he believes was due to the influence of his former father-in-law. Anticipating an unremarkable military career, Applicant was injured in an accident unrelated to his military service in 1979. In April 1980, he was granted a medical discharge from the Soviet Army at the rank of major. He served only 17 years, so was not entitled to a military pension. (GE 2.)

Leaving the military was difficult for Applicant psychologically because he knew no other way of life at that time. (GE 2; Tr. 48.) He found employment in the information technology (IT) industry, initially as an entry-level programmer. After a couple of years, Applicant began working as a senior programmer for a large power supply company in Russia (company X). After a couple of years, he moved on to the IT department of a large travel company affiliated with the Soviet trade unions, but conflict with the director of the data center led him to leave only after about one year. Applicant returned to company X as deputy director and then director of its IT department, where he ordered that hiring decisions be based solely on professional skills. His hiring policies, which

expanded employment opportunities to ethnic and religious minorities and persons who had been denied visas to emigrate from Russia, were not shared by senior executives. "Feeling results of heavy pressure and very elaborate intriguing that had a goal to push [him] out of [his] job," Applicant left the job in the spring of 1989 to become deputy director of an IT data center involved in public transportation. (GE 2.)

Applicant's stepson graduated from a Russian university in June 1989. Applicant and his spouse had already decided that her son should emigrate from Russia for the United States, where he would not experience employment or career discrimination because of his Jewish religion. (GE 2; Tr. 68.) Under the sponsorship of his birth father, Applicant's stepson immigrated to the United States in August 1989. When he left Russia, Applicant's stepson ended a longtime romantic relationship. They had met when both were students at a mathematics high school, and when he left Russia, she was a graduate student at the university. About 1.5 years later, this Russian native immigrated to the United States, and she married Applicant's stepson. They have three children, who are U.S. citizens from birth. (GE 2; Tr. 47.) Applicant's stepson is a U.S. citizen. (GE 1.)

In late 1989 or early 1990, Applicant officially ended his membership in the Communist Party. Applicant and his spouse were granted refugee status in the United States. They sold all of their belongings in Russia to pay for their travel, and they immigrated to the United States in late November 1990. A few days before his departure for the United States, Applicant was feted to a farewell party hosted by Mr. V. Most of the invitees were fellow classmates of the military school Applicant attended as a youth, although his former classmate from the academy, the Russian affiliated with the GRU (SOR 1.j), was also in attendance. Applicant conversed little with him at the party and has had no contact with him since then. (GE 2; Tr. 97-98.)

Although Applicant had been advised by Russian authorities to register with the Russian consulate in the United States, neither he nor his spouse registered or made any effort to contact the consulate after they immigrated. Applicant chose not to travel to Russia on his Russian passport, even though he wanted to see his relatives, because he feared what might happen. (Tr. 56, 76.)

Supported initially by a Jewish organization and then by public assistance for a short time in the United States, it took Applicant six months to land his first job in the United States. (GE 2; Tr. 48.) Applicant began working in business development applications for a local hospital in June 1991. He worked very hard to learn the new technology needed for his job. (Tr. 48.) His spouse, who practiced medicine for 20 years in Russia, graduated in 1996 from a five-year physical therapy program. In June 1995, Applicant's Russian passport expired. In June 1996, Applicant and his spouse became naturalized U.S. citizens. They no longer considered themselves to be citizens of Russia and they accepted no benefits from Russia. Applicant obtained his first U.S. passport in July 1996. (GEs 1-2.) In April 1997, Applicant and his spouse sold a home in the United States and bought their present residence, a condominium, for \$286,000. They had a mortgage on the property, which was paid off in March 2005. (GE 1.)

Applicant's parents-in-law immigrated to Sweden from Russia and eventually became Swedish citizens. Several years later, they still had no success in selling their apartment in Russia. In 2003, Applicant and his spouse bought the apartment from her parents for \$40,000. They have had no success in selling it. From time to time, they rented it out to students. The apartment needs serious renovation and repair, and is now worth less than what they paid for it. Applicant and his spouse pay the utilities, general management fees, and taxes on the property. Their plan is to sell it and put the funds toward their retirement. Applicant trusts one of his spouse's relatives, who worked as an engineer for a research institute before she retired, to care for their property in Russia. Applicant has no other foreign assets. (GEs 1-2; Tr. 101, 113-14.)

After he immigrated to the United States, Applicant maintained close relations with his sister and half-sister, both resident citizens of Russia ("I have to go to visit with my sisters in Russia.") (Tr. 50, 53.) In April 1998, Applicant went to Russia to see his relatives after almost eight years apart. (GE 1; Tr. 55-56.) Applicant's sister is a single mother, who owns a small clothing business at a marketplace. Her son is in his late 20s and works as a computer systems administrator for a large oil and gas company in Russia. In 2003, Applicant's sister won the green card lottery to immigrate to the United States, but her application was rejected due to concerns about whether it was her signature on the form.<sup>5</sup> (Tr. 54.) Applicant's sister has struggled financially. After she lost her savings in a financial crash in Russia in August 1998, Applicant transferred \$3,000 to his sister to help her over the crisis. In 2002 or 2003, Applicant withdrew \$15,000 from his 401(k) in the United States which he sent through a friend in Russia to his sister and half-sister, who split the funds. Applicant's sister used her share for living expenses for herself and son. Sometime in the late 2000s, Applicant's sister borrowed \$74,000 from Applicant to pay for her son's wedding and his new apartment in Russia. As of October 2011, his sister had repaid Applicant in full. Applicant has telephone contact with her about once a month. (GE 2; Tr. 80-81.)

Applicant's half-sister earned a doctorate degree in Russia. She worked for a research institute that developed and produced materials used in the Russian space program, and she held a security clearance. According to Applicant, she was considered an expert in her field before she retired. Applicant has telephone contact with her every two to three months. Applicant considers her to be almost a second mother, and he feels an obligation to support her financially. She lives on a limited government pension where she has to choose between buying coffee and cleaning supplies. (Tr. 56-57, 83-84.) With her share of the \$15,000 from Applicant in 2002 or 2003, Applicant's half-sister bought a small studio for herself in Russia. (GE 2.)

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<sup>5</sup> Applicant explained that it was probably his mistake. Internet directions led his sister to write her first and last name on the application form. Yet, when his sister was interviewed in Russia for her U.S. immigration, the officer asked her to provide the signature that was on her Russian passport, which was not her full name. Her application to immigrate was rejected because her signatures did not match. (Tr. 54-55.) Applicant testified that his sister is not allowed to visit him in the United States because U.S. authorities would not grant her a visa out of concern that she would stay in the United States illegally. (Tr. 54-55.)

Applicant and his spouse vacationed with his sister and half-sisters in Turkey in 2004. Applicant financed his siblings' travel because they could not afford the cost. Applicant also visited with them during each of his trips to Russia, which occurred in April 1998, June 2002, May 2007, August 2010, and October 2012.<sup>6</sup> (GE 2; AEs A, B, D.) Applicant saw his brother during the trip to Russia in May 2007. Applicant's sister and half-sister have not visited him in the United States. (GE 2.) Applicant intends to travel to Russia in the future to see his sisters, although as of late February 2013, he had no specific trip planned. (Tr. 77.) He denies any trouble with border control or any contact with other Russian authorities during his visits to Russia. (Tr. 78.)

Applicant maintains close relations with his spouse's brother, who has lived in Sweden since 1979. They have contact more than 15 times annually. Applicant and his spouse have vacationed with her brother and his wife in Mexico in 2008 and 2010 and in the Caribbean in 2009. Since the death of her mother in December 2007, Applicant's spouse contacts her father every day. She has visited him at his home in Sweden yearly. Applicant sees his father-in-law and his brother-in-law when in Sweden for vacation, including in August 2002, August 2006, and August 2011 when they also toured Germany together. As of October 2011, Applicant and his spouse had another trip to Sweden planned for August 2012. (GEs 1-2.)

Applicant has had particularly friendly relations with two Russian citizens (Mr. A and Mr. S). Applicant has known Mr. A since July 1965. Mr. A was a sergeant working in the laboratory of the military academy when Applicant was a student (SOR 1.h). Mr. A earned his degree in electrical engineering (Tr. 60-61.), and worked as an engineer for a time. When Applicant last saw Mr. A in Russia around May 2007 (AE A.), Mr. A was on the faculty of a Russian institute. Applicant tries to contact Mr. A when he is in Russia to see family and friends. They email each other a few times a year, and they speak by telephone three to five times a year. On his e-QIP, Applicant estimated their total contacts at 8 to 15 annually. Applicant called Mr. A when he was in Russia to see his sister and half-sister in August 2010, but they did not get together. (Tr. 110, 112.) Applicant called Mr. A around August 2011 (Tr. 112-13.), but he did not call or see Mr. A during his trip in October 2012. (AE A.) Mr. S is a former classmate of Applicant's at the military academy (SOR 1.e), so they have known each other since July 1963. Mr. S became a professor at the military academy before he retired from the Russian military around 2000 at the rank of colonel. To Applicant's knowledge, Mr. S was not affiliated with any military intelligence work, although like him, Mr. S had been a member of the Communist Party. (Tr. 89.) Applicant does not know when Mr. S left the Party. (Tr. 91.) After he retired from the military, Mr. S and a couple of his "comrades" started a business that produced plastic bottles that allowed Mr. S to retire seven or eight years later. Mr. S spends most of his time in a summer home that he purchased around 2004.

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<sup>6</sup> Applicant's current U.S. passport shows that he was issued a Russian tourist visa on September 24, 2012, authorizing travel to Russia for a stay up to 30 days between October 5, 2012, and November 3, 2012. Border control stamps show Applicant entered Russia on October 5, 2012, and departed on October 9, 2012. (AEs B, D.) Applicant has avoided contact with the Russian consulate by having his spouse's cousin, a self-employed travel agent, obtain his tourist visas for a nominal fee. (GE 2; Tr. 76.)



Applicant and Mr. S corresponded by email six or seven times a year and conversed by telephone twice a year in the past. (GE 1.) Since 2008, Applicant's contact with Mr. S has diminished to calling him around Mr. S's birthday in June a couple of times. (Tr. 91-92.) Applicant has seen Mr. S only twice since late 1990. They have not seen each other since Applicant's trip to Russia in May 2007. Applicant considers Mr. S to be one of the most intelligent and pleasant people he has ever met. (GEs 1-2; AE A; Tr. 57, 91.) Applicant's friends in Russia know that Applicant is a database administrator, but they know no details of Applicant's work, including the identity of Applicant's current employer. (Tr. 58.)

Applicant has friendly relations but minimal contact with his former classmate Mr. V, with a Russian citizen (Mr. P), whom he met on a ski trip in 1970 (SOR 1.g), and with a Russian Orthodox priest (Mr. L) (SOR 1.i). Applicant did not see Mr. V on his trip to Russia in May 2007, although Applicant called him when he was in Russia. Applicant called Mr. V a couple of years later, around Mr. V's birthday in November. (Tr. 93.) Concerning Mr. P, he was a doctoral student at a Russian university when he and Applicant first met. Mr. P is now a professor of mathematics at the university. Applicant and Mr. P had sporadic telephone contact once every few years until 2006 or 2007. Applicant has not seen Mr. P since his trip to Russia in May 2007. Applicant contacted Mr. P once thereafter, around 2008. (GE 2; Tr. 59-60, 88, 94.) Mr. L, the Russian Orthodox priest, had previously had been a professor at an institute in Russia (SOR 1.i). Applicant's ex-wife and Mr. L's spouse were coworkers when they met in 1969 or 1970. Applicant and Mr. L had a close relationship when Mr. L decided to become a priest, and Applicant was one of the few who supported Mr. L's decision. Their contact has been limited to a telephone call once every few years or an occasional email. Applicant has not seen Mr. L since 2007. (GE 2; AE A; Tr. 61, 96.)

Applicant's allegiance is to the United States, where he has pursued a career as a database administrator for the past 22 years. He considers the current government in Russia to be worse than the former Soviet state ("KGB is in power, KGB is controlling."). (Tr. 49.) Applicant's family members in Russia do not share his pride in America, and it has been a source of argument between him and his sister on occasion. (Tr. 70.)

Applicant spent most of his employment between January 2001 and May 2009 as a direct hire or consultant for a major U.S. defense contractor, although apparently in non-defense work. Applicant did not need a security clearance for his IT duties. (Tr. 71.) From June 2009 through July 2010, Applicant worked for a technology consulting company. (GEs 1-2.)

On July 8, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) for the clearance required to work for his present employer. Applicant reported his former service in the Russian military and grant to him of a security clearance while in the Soviet Army; the Russian residency and citizenship of his ex-wife, sister, and half-sister; his close contacts with three foreign nationals Mr. A, Mr. S, and his brother-in-law; his joint ownership with his spouse of an apartment in Russia; his possession of a valid Russian passport from July 1990 to July 1995; and his

foreign travel. He disclosed one trip to Russia in the previous seven years, to visit family and friends from April to May 2007. (GE 1.) Applicant was granted interim access two or three weeks later. He began working for his current employer in August 2010 as a database administrator for a military integrated personnel and pay program. (Tr. 24-25, 32.)

Around ten days later, Applicant was interviewed in August 2010 for his security clearance. He reported his foreign contacts with some individuals not listed on his e-QIP, including Mr. P, Mr. L, and his spouse's relative, who handles the apartment in Russia for Applicant and his spouse, although with no report of that interview available, the extent of his disclosures is unclear. Applicant was re-interviewed several times in October 2011 by an authorized investigator Office of Personnel Management (OPM). Applicant provided a very detailed affidavit on October 25, 2011, in which he described his past in Russia, his foreign contacts past and present, and his foreign travel. Applicant detailed the attempt of the GRU to recruit him for its academy in the early 1970s. He denied that he was ever tasked to collect information on the United States or to pass information concerning the U.S. government to anyone. He was also unaware of any threats or coercion attempts to induce his cooperation with a foreign intelligence service, or of any foreign government (apart from the GRU recruitment) expressing an unusual interest in him. Applicant denied he could be blackmailed or pressured because of his former life and activities in Russia. (GE 2.)

In June 2003, Applicant purchased two vacant lots for investment purposes in the United States. One of the lots, which cost him \$25,000, sold for \$72,500 in December 2004. He spent \$52,000 for the other parcel, but its value had declined to about \$19,000 as of October 2011. In November 2004, Applicant and his spouse purchased a summer vacation home in the United States for \$415,000. They paid off the mortgage in January 2009 with \$134,000 from a home equity line of credit. They made \$50,000 in home improvements on the property. (GE 2.) In 2012, Applicant and his spouse purchased a one-bedroom condominium with their personal savings. (Tr. 106.) As of October 2011, Applicant's retirement assets in the United States totaled around \$515,000. His spouse had another \$300,000 in retirement savings. Applicant's salary was \$128,000, while his spouse's earnings from her work as a self-employed physical therapist have varied from \$110,000 to \$120,000 in the last few years. (GE 2; Tr. 87.) Applicant would like to work for another three years. He believes it would be difficult to find another job at his age, which he will be required to do if he is not granted his security clearance. (Tr. 65.)

Applicant's supervisor testified that Applicant has been "a consummate professional, somebody with high morality and ethics and [who has] gone above and beyond the call of duty relating to [his] job responsibilities within the program." (Tr. 32-33, 39.) Applicant works with personal information of a sensitive nature, although it is not classified. (Tr. 37-38.) Applicant has followed his employer's security policies "to the letter of the law." (Tr. 34.) After his interim security clearance was withdrawn, Applicant was prohibited from operating in a PII enclave. (Tr. 39-40.) Applicant's supervisor is aware that Applicant had served in the Soviet Army and was a member in the "Russian

Youth Movement”, and that Applicant’s sister lives in Russia. (Tr. 41.) He has no reservations about granting Applicant a security clearance. (Tr. 39.)

### **Administrative Notice**

After reviewing U.S. government publications concerning Russia and its relations with the United States, I take administrative notice of the following facts:

Russia is a vast and diverse federation consisting of 83 members with a total population around 142.9 million. As the successor state to the former Soviet Union, Russia inherited the U.S.S.R.’s permanent seat on the United Nations Security Council, most of its military assets, and the bulk of its foreign assets and its debts. Power is concentrated in the executive branch, primarily in the president and prime minister. Its weak multiparty political system is dominated by the pro-government United Russia party and a bicameral legislature consisting of the State Duma (lower house) and Federation Council (upper house).

Russia has an uneven human rights record. The December 2011 parliamentary elections to the DUMA were criticized by international observers as marked by government interference, manipulation, and electoral irregularities. In March 2012, President Putin was selected to a third term, having already served the constitutional maximum two consecutive terms from 2000 to 2008 in an election marked by a lack of genuine competition and biased media coverage. The U.S. State Department reports that in 2011, individuals who threatened powerful state or business interests were subjected to political prosecution as well as harsh conditions of detention. While there was free expression on the Internet and in some print and electronic media, self-censorship and the government’s ownership of and pressure on some media outlets limited public discourse. Other human rights abuses include a judiciary often subject to political authorities, widespread corruption at all levels of government and law enforcement, physical abuse and hazing in the military, violence against women and children, restrictions on right to free assembly, and trafficking in persons.

Russian law forbids entry to private residences except in cases prescribed by federal law or on the basis of a judicial decision. Government monitoring of correspondence, telephone conversations, or other means of communication without a warrant and collection, storage, utilization, and dissemination of information about a person’s private life without consent are also prohibited. While these prohibitions were generally followed in 2011, there were allegations that government officials and others engaged in electronic surveillance without judicial permission and entered residences and other premises without warrants. Telecommunications service providers in Russia are required to grant the Ministry of Internal Affairs and the Federal Security Service 24-hour remote access to their databases, enabling police to track private communications and monitor Internet activity. Authorities are legally authorized to monitor telephone calls in real time.

Russia has continued to increase its international profile over the past several years and to take a more assertive role in regional issues. Russia has not shied from using its significant oil and gas exports as sources of political influence. U.S. and Russian relations have improved since 2009. The countries share common interest on a broad range of issues, including countering terrorism, cooperating in Afghanistan, reducing their strategic arsenals, and stemming the proliferation of weapons of mass destruction. In July 2009, President Obama and then Russian president Medvedev established a Bilateral Presidential Commission dedicated to improving coordination between the two countries, identifying areas of cooperation, and pursuing joint projects that strengthen strategic stability, international security, economic well-being, and the development of ties between the Russian and American people. The U.S. intelligence community perceives that under Putin, Russia is likely to continue a cooperative relationship with the United States, albeit probably more confrontational about policy differences.

At the same time, Russia inherited a significant intelligence capability from the former Soviet Union, and continues to focus, with increasing sophistication, on collecting sensitive and protected U.S. technologies through its intelligence services. Along with the People's Republic of China, Russia is one of the most aggressive collectors of U.S. economic information and technology, using human intelligence, cyber, and other operations. In June 2010, ten Russian Intelligence Service secret agents were arrested for carrying out long-term, deep-cover assignments for Russia in the United States. In July 2010, all ten pleaded guilty to conspiracy to act as an agent of a foreign government, and they were immediately expelled from the United States. In January 2011, a convicted spy and former U.S. Central Intelligence Agency employee was sentenced to an additional 96 months in prison after pleading guilty to conspiracy to act as an agent of a foreign government and conspiracy to commit international money laundering. He passed information to the Russian government in exchange for money between 2006 and 2008. The U.S. Office of the National Counterintelligence Executive reports a possible increase in Russian collection over the next several years because of the many Russian immigrants with advanced technical skills working for leading U.S. companies who may be targeted for recruitment by Russian intelligence services. Also, Russia's increasing economic integration with the West is seen as likely to lead to a great number of Russian companies affiliated with the intelligence services, often through employing ostensibly retired intelligence officers, doing business with the United States. Beyond collection activities and espionage directed at the United States, Russia has provided various military and missile technologies to other countries of security concern, including China, Iran, Syria, and Venezuela.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines.

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B—Foreign Influence**

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

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.

Applicant's sister and half-sister are resident citizens of Russia. Applicant also has five longtime friends from his former life in Russia with whom he kept in contact after he immigrated to the United States. AG ¶ 7(a) is implicated if contacts create a heightened risk of foreign influence:

(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.

The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "the United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Despite improved relations between Russia and the United States since 2009, Russia has an active, ongoing espionage program that targets the United States. Ten secret agents were arrested and expelled from the United States in 2010 for conspiring to serve as unlawful agents of Russia in the United States. A former CIA agent is serving a lengthy prison sentence for conspiring to commit espionage by passing information to Russia in return for cash. There is no evidence that Applicant's siblings or his friends have ever been involved in espionage or intelligence activities against the United States. At the same time, Russia retains some characteristics of a police state, with an executive branch that has the power to monitor private, electronic communications; control the judicial branch of the government; and intimidate the press.

Applicant has family and friendship contacts with Russian citizens that establish AG ¶ 7(a). Applicant traveled to Russia in April 1998, June 2002, May 2007, August 2010, and October 2012 to see his sisters. He and his spouse vacationed with his sisters in Turkey in 2004 at his expense. Applicant calls his sister once a month. He telephones his half-sister, who he regards as a second mother, every two or three months. She is now retired. However, the risk of undue foreign influence is heightened somewhat by her former employment with a government research institute and her apparent expertise in her field. Furthermore, two of his friends in Russia (Mr. S and Mr. V) are retired Army officers. Applicant's closest friend, Mr. A, did not pursue a military career, but he is currently a professor at a Russian institute. On his e-QIP, Applicant listed Mr. S and Mr. A as "close" friends. Applicant called Mr. A when he was in Russia in August 2010 and from the United States in August 2011. Applicant's contacts with Mr. V, Mr. P, and Mr. L pose less of a risk, given the diminished nature of the contacts to once or twice every few years since Applicant immigrated, although Applicant visited with Mr. P and Mr. L, and he called Mr. V, when he was in Russia in 2007. Concerning Applicant's association with his former classmate who graduated from the GRU academy and then became a professor at the intelligence academy (SOR 1.j), Applicant has had no contact with him since 1990.

AG ¶ 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," focuses on the relationships that might pose a heightened risk. Applicant's sister's negative opinion of the United States has been a source of disagreement between her and Applicant, but it has not affected Applicant's affection for her. Applicant also shares close bonds with his older half-sister, who has been a second mother to him. Applicant has provided financial support for both siblings in the past, and he intends to visit them in the future. Applicant's former military schooling and his service in the Soviet Army (SOR 1.a) are of current security concern because of the bonds of friendship that Applicant formed there and has since maintained, especially with Mr. A and Mr. S, whom he described as close friends. Also, Applicant held a Russian security clearance when relations between the Soviet Union were openly adversarial. AG ¶ 7(b) applies.

AG ¶ 7(e), "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation," is also implicated. Applicant and his spouse own an apartment in Russia that they bought from her parents for \$40,000 around 2003.

The evidence falls short of establishing AG ¶ 7(g), "unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service." While the GRU attempted to recruit Applicant in the early 1970s, Applicant declined the offer. Applicant's only connection to the GRU is tangential, through his friendship to Mr. V, who invited the GRU-affiliated professor to Applicant's farewell party. Applicant

testified credibly that he disliked the Russian intelligence professional and had no ongoing association with him.

Concerning potential factors in mitigation, AG ¶ 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.,” is difficult to satisfy because of the ties of family and friends to the Russian government or military and Russia’s espionage directed at the United States. While nothing about Applicant’s sister’s occupation as a small business owner heightens the security risk, Applicant’s half-sister spent her career in the service of a Russian institute where she developed expertise in materials used in the Russian space program. Similarly, while Russian friends and former classmates Mr. S and Mr. V have been retired for some time from the Russian Army, the risk of them being known to Russian authorities cannot be discounted. Concerning Applicant’s other friends in Russia, Mr. P and Mr. A are professors at Russian institutions. Mr. L is a former professor.

Applicant’s contacts with his friends in Russia have diminished over time, which is understandable given the distance between them and Applicant’s choice to pursue a life in the United States. Applicant has not seen any of his old friends in Russia since his trip there in 2007. He has not seen Mr. V since his previous trip in 2002, although they spoke when Applicant was in Russia in 2007. Applicant had a close relationship with Mr. L before 1990, but their contact has been very limited since Applicant left Russia. Applicant’s contact with Russian friends Mr. V, Mr. P, and Mr. L are sufficiently casual and sporadic to implicate AG ¶ 8(c), “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.” Yet, AG ¶ 8(c) cannot reasonably apply to Applicant’s contacts with his sisters or to Applicant’s closest friends in Russia. Although the frequency of Applicant’s contact with Mr. S has declined since Mr. S retired from his business and spends most of his time at his summer home in Russia, Applicant described him as a close friend on his e-QIP. Applicant shares an even closer relationship with Mr. A. As of July 2010, Applicant and Mr. A were in contact 8 to 15 times annually. Applicant called Mr. A when he was in Russia in August 2010. He last spoke with him in August 2011.

Applicant does not consider the property in Russia to be important to their overall financial situation. He and his spouse bought it as an investment from her parents when they were unable to sell it, but the property is of minimal value in relation to his overall financial portfolio, which includes employment, retirement assets, and three properties (his primary residence, a summer home, and a condominium) in the United States. AG ¶ 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,” is established. Applicant and his spouse have tried to sell the property, which needs repair and renovation.



A heightened risk of undue foreign influence may also be mitigated under AG ¶ 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.” The Soviet military shaped Applicant from his youth. His former father-in-law had contact with the KGB, and apparently sufficient political influence within the military academy to adversely affect Applicant’s military career. Applicant was denied the opportunity to accomplish his goal of becoming a professor at the military academy. Even so, it took him almost ten years after his discharge from the Army to complete his “transformation from a hardcore communist” (GE 2.) and end his membership in the Communist Party. However, I am persuaded that Applicant has no allegiance to Russia or its KGB-dominated government.

Applicant has developed deep ties to the United States since late 1990, most notably his U.S. citizenship in 1996. He has established a 20-year career as a database administrator in the United States. His financial stability comes from U.S. employment and retirement income. Applicant and his spouse own several properties in the United States, including their home, on which the mortgage has been paid off. Applicant’s immediate family members (his spouse, stepson, and grandchildren) are all U.S. resident citizens. Applicant has not attempted to obtain any benefit from Russia, and while he has traveled to Russia, he has avoided contact with Russian consular officials by obtaining visas through his spouse’s relative, who works as a travel agent. These ties weigh in his favor in assessing whether he can be counted on to act in the U.S.’ interest.

Applicant has been candid about his foreign ties, including his affection for his sisters. Yet, I cannot overlook that Applicant continued to maintain relationships with some former military classmates even after he left his old life in Russia behind. These relationships, along with his close bonds of affection to his sisters, raise concerns that he could be targeted for exploitation, pressure, or coercion by the government of Russia in ways that might also threaten U.S. security interests. Applicant intends to travel to Russia in the future, and U.S. intelligence authorities are concerned about a possible increase in Russian collection over the next several years because of the many Russian immigrants with advanced technical skills working for leading U.S. companies who may be targeted for recruitment by Russian intelligence services. Applicant’s ties to Russia remain a security concern.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at

AG ¶ 2(a).<sup>7</sup> Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. . . [A]n applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country hostile to the United States.

See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

In the last 20 years, Applicant has demonstrated his commitment to a new life consistent with democratic principles and a spirit of openness. When he held an interim security clearance for his present employer, he handled sensitive information appropriately. Nonetheless, in light of the totality of the facts and circumstances of Applicant's history, including the fact that he held a Russian security clearance when he was "a hardcore communist," and his ongoing relations since 1990 with Russian citizens subjected to similar Soviet era indoctrination, I am unable to find that it is clearly consistent with the national interest to grant Applicant a security clearance. This adverse determination is *not* a comment on Applicant's patriotism, but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member.

### 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:           AGAINST APPLICANT

Subparagraph 1.a:               Against Applicant

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<sup>7</sup>The factors under AG ¶ 2(a) are as follows:

(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 changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant

### **Conclusion**

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge