



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



In the matter of: )  
)  
) ISCR Case No. 12-06566  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

05/29/2013

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant moved from her native Russia to the United States in August 1995, when she was 12 years old. Since becoming a naturalized U.S. citizen in January 2006, Applicant has renewed her Russian passport to facilitate travel to Russia to see her elderly grandparents, an aunt, and three cousins. The foreign preference and foreign influence security concerns are not fully mitigated, despite her longstanding and deep ties to the United States. Clearance denied.

**Statement of the Case**

On August 29, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline C, foreign preference, and 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 September 11, 2012, and she indicated she did not want a hearing. On February 19, 2013, Applicant requested a hearing, and on April 5, 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. With the agreement of both parties, on April 11, 2013, I scheduled a hearing for April 29, 2013.

At the hearing, two Government exhibits (GEs 1-2) and one Applicant exhibit (AE A) were admitted without objection. Applicant also testified, as reflected in a transcript (Tr.) received on May 3, 2013. At the Government's request, and without any objection from Applicant, 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> In addition, on the Government's motion, and with no objection from Applicant, SOR 1.a and 1.b were amended to correct the date of Applicant's U.S. naturalization from August 1995 to January 2006.

### **Summary of SOR Allegations**

The SOR as amended alleges under Guideline C, foreign preference, that after Applicant acquired her U.S. citizenship in January 2006, she renewed her Russian passport in January 2011 for another five years (SOR 1.a) and that she used that Russian passport for foreign travel in lieu of her U.S. passport (SOR 1.b). Under Guideline B, Applicant's grandparents (SOR 2.a), three cousins (SOR 2.b), and an aunt (SOR 2.c) are alleged to be resident citizens of Russia.

In her Answer to the SOR, Applicant admits that she renewed her Russian passport as a U.S. citizen and used it for travel, but only to visit her family in Russia.

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<sup>1</sup>The Government's request for administrative notice, dated March 27, 2013, was received on April 24, 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, dated February 2, 2012, and February 16, 2011; on a statement by the Director of the Defense Intelligence Agency, dated March 10, 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 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 her family relationships. The request for administrative notice and source documents were incorporated in the record as hearing exhibit (HE) 1.

She explained that persons born in Russia face a “lengthy and challenging process” to obtain a visa to enter Russia, and because of the need to travel quickly to see family members, she “relied on the expediency of using a Russian passport.” As for the Guideline B allegations, Applicant admitted that her relatives are Russian resident citizens, but she asserted that her allegiance is to the United States. She denied any ties to Russia apart from these family members.

### **Findings of Fact**

Applicant’s admissions to renewing and using her Russian passport in lieu of her U.S. passport to travel to Russia and to the Russian residency and citizenship of her grandparents, three cousins, and an aunt, are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 30-year-old certified public accountant (CPA), who started her career in accounting as a bookkeeper in October 2004. She earned her master’s degree in accounting with a “perfect” GPA in May 2009, funding her education through grants, scholarships, and employment income. (GEs 1, 2; AE A; Tr. 23-24.) From November 2009 to about August 2012, Applicant worked as a tax accountant for a large private accounting firm. (GE 1; AE A.) As of late April 2013, Applicant was employed by a local CPA firm. (Tr. 36.) She has a pending job offer from a defense contractor, which is contingent on favorable adjudication of her security clearance eligibility. (GE 1.)

Applicant was born in Russia (then the Union of Soviet Socialist Republics) in 1983. (GEs 1, 2.) Her father worked in the export of metals. Her mother did not work outside the home. Applicant and her parents vacationed in the United States, and after a few visits, her parents purchased a condominium here. In late August 1995, Applicant and her parents moved to the United States. (GEs 1, 2.) Applicant entered the United States on a Russian passport valid for five years. (Tr. 28.) Applicant’s father worked in software design and then in real estate, while her mother enrolled in a nursing program. (Tr. 47.) Applicant attended her local schools. (Tr. 46.)

In May 2004, Applicant earned a bachelor’s degree, *cum laude*, in international relations from a private university in the United States. (GE 1; Tr. 23.) In August 2004, Applicant married a U.S. native citizen. (GE 1; Tr. 32.) Several of Applicant’s family members traveled from Russia to the United States for her wedding. (Tr. 31.)

Applicant continued to renew her Russian passport every five years with the intention of visiting extended family members in Russia. (Tr. 28.) On January 24, 2006, Applicant took the oath of naturalization in the United States. She retained her Russian citizenship and Russian passport. In preference to her U.S. passport issued to her on March 13, 2006 (GE 1.), she used her Russian passport to visit family in Russia in August 2006 and for a family wedding in August 2009. (GE 2; Tr. 28, 31.) Applicant had both passports in her possession, and she reentered the United States on her U.S. passport. (Tr. 42.) Other than routine border contact, Applicant had no contact with Russian officials during her trips to Russia in 2006 and 2009. (GE 2.)

In January 2011, Applicant renewed her Russian passport at the Russian embassy. The passport is scheduled to expire in January 2016. (GE 1.) Before doing so, she contacted the Russian consulate by telephone about whether she would be able to apply for a visa to travel to Russia on her U.S. passport. (Tr. 39-40.) Although not expressly stated, she was led to understand from the consulate that if she gave up her Russian passport, she would likely be denied a travel visa to enter Russia indefinitely. (Tr. 26.) Applicant did not want to risk being prevented from ever seeing her family in Russia again or from being able to travel to Russia on short notice. Her maternal grandparents died after she moved to the United States, and she was not able to travel to Russia for their funerals. Since her paternal grandparents are aging and not in perfect health, they can no longer physically endure the transatlantic travel. (Tr. 27.)

On February 17, 2012, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant disclosed her and her parents' dual citizenship with Russia and the United States; her possession of valid passports from both countries; and her quarterly contact with six Russian citizens. She listed recent contact by telephone, electronic media, or both, with her paternal grandmother in January 2012, with her paternal grandfather in November 2011, with her paternal aunt and aunt's two daughters in December 2011, and with a maternal cousin in July 2011.<sup>2</sup> Applicant disclosed only one foreign trip in the last seven years, to the Bahamas in August 2009. (GE 1.)

Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) on April 13, 2012. She admitted that she maintains dual citizenship and dual passports so that her travel to Russia to visit family members will not be delayed by having to apply for a visa. Her grandparents are elderly, and she is able to leave for Russia on short notice if necessary.<sup>3</sup> She will have to renounce her Russian citizenship to relinquish her foreign passport, and she does not intend to do so. Applicant denied any intent to use her Russia passport for any purpose other than family visits to Russia. She is unaware of any other benefit available to her as a non-resident citizen of Russia and has no plan to inquire about any foreign benefits. Applicant expressed her loyalty to the United States, where she has lived since age 12. About her relatives in Russia, Applicant indicated that she thought her grandparents had worked in the same factory in Russia. Her aunt is employed in real estate; the elder of her aunt's two daughters is married and caring for a newborn; and the younger daughter is a student. Applicant reported more limited contact, around twice a year by phone, with a maternal cousin, who is also a student. Applicant told none of her foreign relatives that she was applying for a DOD security clearance. Applicant denied any foreign financial interests. While she admitted that she had renewed her Russian passport at the Russian embassy in January 2011, she omitted this foreign contact from

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<sup>2</sup> Applicant has three aunts, but she is in contact with only one of them, an aunt on her father's side of the family. (Tr. 32.)

<sup>3</sup> Applicant later summarized that her dual citizenship was solely to make her foreign family members more accessible in the event of a family emergency. When asked whether the situation would change on the deaths of her grandparents, Applicant responded that she had other family members in Russia. (GE 2.)

her e-QIP because she did not consider it a foreign contact in light of her dual citizenship. Concerning any foreign travel in the last seven years, Applicant indicated that she went to Russia for two weeks in August 2006 to visit family and for ten days in August 2009 for a family wedding. She attributed her failure to disclose this foreign travel on her e-QIP to oversight. (GE 2.)

As of late April 2013, Applicant had not surrendered or destroyed her foreign passport, despite being told by the defense contractor that her passport would need to be destroyed in accord with DOD requirements. (Tr. 30-31, 41.) She testified she would “happily” renounce her Russian citizenship if doing so would not prevent her from being able to enter Russia in the future to see her family, but Russia requires a “very formal, lengthy petition process” with no guarantee of success. (Tr. 25-26.) Applicant has not tried to apply for a visa to travel to Russia on her U.S. passport. She has not checked to see whether Russian law currently requires Russian natives to hold a Russian passport for entry into the country. (Tr. 39.) An only child, Applicant values the closeness of her family abroad, and she is not willing to risk permanent separation from them because of the political relationship between the United States and Russia. Applicant has her plane ticket to travel to Russia for one week in June 2013 to visit family. (Tr. 29, 41.) She plans on using her Russian passport to enter Russia, but her U.S. passport on her return to the United States. (Tr. 41-42.)

Applicant has become closer to her Russian relatives, especially to her paternal aunt, as technological advances have made it easier to maintain contact. (Tr. 43.) To Applicant’s knowledge, none of her family members in Russia are politically active or have government ties. Her grandparents have been retired for many years. Applicant’s communication with her Russian relatives is generally by telephone or video chat. They discuss their day-to-day lives. (Tr. 21-22.) As of April 2013, Applicant was in contact with her paternal grandfather maybe once or twice a year. He lives alone. Applicant communicates with her paternal grandmother, who lives with Applicant’s aunt, by video chat about once a month. (Tr. 32.) Applicant speaks to her grandparents in Russia. They do not speak English. (Tr. 34.) Applicant spoke with her aunt in Russia over the weekend of April 27-28, 2013, to discuss their plans for meeting during her upcoming trip in June 2013. Applicant intends to visit her father’s family. (Tr. 44-45.)

Applicant’s aunt still works in real estate. (Tr. 33.) The eldest of Applicant’s cousins in Russia just started working as an administrative assistant after the birth of her first child. (Tr. 35.)

Applicant leads a quiet life in the United States with her spouse and their two dogs. Applicant and her spouse moved to their present area in late August 2012 for his employment as an engineer with the defense contractor that has offered an accountant position to Applicant contingent on her being granted a DOD security clearance. Applicant’s spouse holds a security clearance. Applicant and her spouse just started contributing to retirement accounts in the United States. (Tr. 37.) Applicant is registered to vote in the United States. (Tr. 22-23.) She has never voted in a Russian election. (Tr. 37.) She has handled sensitive information on a regular basis in her work as an

accountant, and she has been reliable and trustworthy in handling that information. (Tr. 24.) Applicant understands that a DOD security clearance is a privilege. (Tr. 30.)

Applicant's father-in-law retired from a large police department after 25 years of service, including as a homicide lieutenant. He is currently in his 20<sup>th</sup> year as a part-time instructor at a police academy. He has known Applicant since 2000 and considers her to be honest and trustworthy. (AE A.)

### **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, 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 of 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. In addition, Russia's increasing economic integration with the West is seen as likely to lead to a greater 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 C—Foreign Preference

The security concern relating to the guideline for foreign preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a 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.

Applicant is a dual citizen of the United States and Russia based on her birth in Russia and her naturalization in the United States. Retention of foreign citizenship acquired from birth out of respect for one's ethnic heritage, for example, is not disqualifying in the absence of an exercise of a right, privilege, or obligation of that citizenship. See AG ¶ 11(a), "dual citizenship is based solely on parents' citizenship or birth in a foreign country." Applicant renewed her Russian passport as a United States citizen in 2006 and 2011, and she used her foreign passport in preference to her U.S. passport to enter Russia in August 2006 and August 2009. Her renewal, use, and ongoing possession of an active Russian passport after her naturalization in the United States raises significant issues of foreign preference under AG ¶ 10(a)(1), "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport." AG ¶ 10(b), "action to acquire or obtain recognition of a foreign citizenship by an American citizen," is also implicated. Applicant's renewal of her Russian passport at the Russian embassy was an action obtaining official recognition of her Russian citizenship.

Of the potentially mitigating conditions, AG ¶ 11(a), "dual citizenship is based solely on parents' citizenship or birth in a foreign country," applies only in that Applicant acquired her Russian citizenship by birth. AG ¶ 11(a) does not mitigate the risk of unverifiable travel raised by her renewal and use of her Russian passport. Her retention of her Russian passport shows her willingness to comply with a requirement of her Russian citizenship.

During her April 2012 interview with the OPM investigator, Applicant expressed her intent to retain Russian citizenship. Without her Russian passport, she would incur delay in traveling to Russia in that she would have to obtain a visa. At her hearing, Applicant explained that when she last renewed her Russian passport in 2011, she was told that if she renounced her Russian citizenship, she would likely not be granted a visa to enter Russia on her U.S. passport. Applicant has not attempted to apply for a visa on her U.S. passport or made any effort to determine whether her understanding is in accord with Russian law.<sup>4</sup> While Applicant testified that she would "happily" renounce

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<sup>4</sup> The U.S. State Department reports that U.S. citizens also holding Russian passports are expected to enter and depart both Russia and the United States carrying the passport of that country. Russian

her Russian citizenship, her willingness to do so is clearly conditioned on her being able to visit her relatives in Russia in the future. AG ¶ 11(b), “the individual has expressed a willingness to renounce dual citizenship,” is not established.

Applicant was informed by the defense contractor that her foreign passport would have to be destroyed. AG ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” provides for the possibility of surrender of a valid foreign passport in lieu of destruction or invalidation. Applicant has taken no steps to surrender her foreign passport or to obtain official approval for its use from the cognizant security authority. Neither AG ¶ 11(e) nor AG ¶ 11(d), “use of a foreign passport is approved by the cognizant security authority,” applies. Aware of the DOD’s policy regarding the use and possession of a foreign passport, Applicant still intends to use her Russian passport in June 2013 to enter Russia to see her family members. The requirements of foreign law are not a mitigating condition under the Directive. Applicant’s active exercise of her foreign citizenship is not mitigated under Guideline C.

### **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

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citizens carrying Russian passports should confirm that their Russian passport is valid beyond their planned departure date because they will not be permitted to depart Russia with an expired Russian passport. Obtaining a Russian passport in Russia as a non-resident is extremely difficult. Russian authorities will not permit departure from Russia if the Russian passport is lost or stolen, even in cases when the traveler also has a valid U.S. passport. A new Russian passport will be required in such cases, and the process can take several months and prevent a timely exit from Russia. As reported by the State Department, Russian consular officials generally require that dual U.S.-Russian nationals renounce their Russian citizenship—a process that may take several months—prior to issuing any Russian visa, including transit (exit) visas, in a U.S. passport. So-called “Repatriation Certificates” (Svidetel'stvo na vozvrashcheniye) issued to Russian citizens abroad are only valid to enter Russia, not to depart from Russia, and bearers of such certificates must apply for a new passport inside Russia. See *Russian Federation, Country Specific Information*, dated December 21, 2012. The State Department confirms that a dual citizen of Russia and the United States is required to enter Russia on a Russian passport. However, it does not indicate that expatriate Russians are prevented from traveling to Russia if they renounce their Russian citizenship, although the process to renounce may take some time. A new visa agreement between the United States and Russia, effective September 9, 2012, reduces complications for U.S. citizens who visit, transit, or reside in Russia.

States citizens to obtain protected information and/or is associated with a risk of terrorism.

Applicant's extended family members are all resident citizens of Russia. AG ¶ 7(a) is implicated if Applicant's contacts with them 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 foreign relatives 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 ongoing contact with her paternal grandparents, an aunt, and three cousins in Russia. Some, if not all of these family members, traveled to the United States for her wedding in 2004. Applicant visited with them in Russia in 2006 and 2009, and she is traveling to Russia in June 2013 to visit her grandparents, aunt, and two of her three cousins. Applicant has ongoing contact with her grandmother by video chat,

recently around once monthly. Applicant had telephone contact with her aunt the weekend before her security clearance hearing. Applicant is in contact with this aunt's daughters quarterly. While Applicant's communications with her grandfather have diminished to twice a year, Applicant plans to see him on her upcoming trip to Russia. AG ¶ 7(a) applies.

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. As Applicant matured and technology made contact easier, Applicant established even closer ties of affection to her family in Russia. There is nothing untoward about Applicant wanting to maintain close relations with her extended family, and these foreign family members appear to lead largely unremarkable lives in Russia. Yet, when faced with the choice of complying with the DOD's passport requirements, Applicant acted out of an unconfirmed concern about being precluded from visiting her family in Russia if she renounced her Russian citizenship. AG ¶ 7(b) is established by her demonstrated act of preference for her relationship with her Russian relatives.

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. Russia continues to engage in espionage directed at the United States.

Applicant may contact her grandfather by telephone only twice a year, but it is difficult to satisfy 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." Applicant intends to visit with him in June 2013, and she has frequent contact with other family members, most notably her grandmother and aunt. Applicant's bonds with her family members in Russia, especially her aunt, have become closer as electronic media has made contact easier.

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." Applicant has very significant ties to the United States. Although a U.S. citizen only since January 2006, Applicant has lived in the United States since she was 12 years old, so she has been exposed to, and presumably influenced by, Western culture and ideas from a young age. All her schooling, through graduate school, has been in the United States. Her career as a CPA is in the United States. She married a U.S.

citizen, who works for a defense contractor and apparently holds a security clearance for his duties. She votes in the United States. All of her financial assets are here.

Applicant testified that while she respects her Russian heritage, her loyalty is “unquestionably to the United States.” (Tr. 25.) Applicant did not disclose on her e-QIP that she went to the Russian embassy in 2011 to renew her Russian passport, because she did not view it as an embassy foreign to her. Guideline B cases are not about loyalty. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), “Application of the guidelines is not a comment on an 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.” Her close bonds of affection for her extended family in Russia have led her to act inconsistent with her U.S. citizenship by renewing and using her Russian passport after she took her U.S. oath of naturalization. Her active exercise of foreign citizenship raises concerns primarily of foreign preference, but it also demonstrates the strength of her foreign ties. She dared not risk a formal inquiry into the process of renouncing her Russian citizenship for fear of permanent separation from her family members in Russia. Her willingness to report all foreign contacts to the DOD is not sufficient to mitigate the foreign influence concerns.

### **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 her conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>5</sup> 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

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<sup>5</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.

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).

By all accounts, Applicant is an honest and ethical person. She has been upfront with the DOD about her ongoing contacts with her Russian family members, for whom she bears understandable affection. Applicant has no control over the fact that they live in Russia or that Russian law requires Russian-U.S. dual citizens to enter the country on a Russian passport. However, it is within Applicant's control whether to retain her Russian citizenship and possession of a valid Russian passport. Knowing that the DOD requires surrender, destruction, or invalidation of a foreign passport, or alternatively, approval by the cognizant security authority, Applicant has placed her security worthiness in doubt by choosing to continue to possess and use a Russian passport. Applicant may well have other options if she wants to see her family. It has not been shown that she would be indefinitely precluded from entering Russia on a U.S. passport, if she renounced her Russian citizenship. Perhaps she could meet her relatives in a neutral country that would allow entry on a U.S. passport, but even if not, there are no exceptions under the adjudication policies for personal hardship, foreign law, or emergency. 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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against 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