



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



In the matter of:)	
)	
)	ISCR Case No. 12-07416
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On September 12, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 answered the SOR on September 29, 2012, and requested a hearing before an administrative judge. The case was assigned to me January 15, 2013. The Defense Office of Hearings and Appeals issued a notice of hearing on January 17,

2013. I convened the hearing as scheduled on February 5, 2013. The Government offered Exhibits (GE) 1 through 8, which were admitted into the record without objection. The Government requested administrative notice be taken of HE I through III. There were no objections, and I granted the request. Applicant testified on his own behalf. He offered Exhibits (AE) A through E, which were admitted into the record without objection. The record was held open until February 12, 2013, to allow Applicant to submit additional documents. He timely submitted AE F, which was admitted into the record without objection.¹ DOHA received the hearing transcript (Tr.) on February 13, 2013.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b and 1.c and denied the allegations in ¶¶ 1.a and 1.d. At his hearing, he admitted he mistakenly denied the allegation in ¶ 1.a and should have admitted it. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. He was born and raised in Uzbekistan. He earned a bachelor's degree in Uzbekistan in 1984. He married in 1994. His wife was also born and raised in Uzbekistan. They have a daughter born in Uzbekistan in 1995. In 1998, he was selected in a diversity lottery, and he and his family were permitted to immigrate to the United States. He, his wife, and their daughter became naturalized U.S. citizens in 2004. In 2005, Applicant earned another bachelor's degree from a U.S. college. He began work on a master's degree, but had to stop because he had difficulty paying the tuition. In 2006, Applicant and his wife had a son born in the U.S.²

In 2007, Applicant was granted a confidential security clearance so he could work as a translator for a government contractor. In 2008, he was granted a secret security clearance. He worked for another government contractor as a linguist, translator, and interpreter at an overseas facility. He was employed in this capacity until November 2011. He no longer is employed as a linguist. He now works in the United States for a government contractor. While holding a security clearance, he has had no security violations or issues.³

Applicant has a brother and a sister who lived in Uzbekistan. He had a second brother who is deceased. His remaining brother is a doctor who works part-time for the Department of Health and is the head of a laboratory for the treatment of women's medical issues in Uzbekistan. All of the medical facilities in Uzbekistan are government controlled or owned. Applicant stated that in the past his brother considered quitting his part-time job at the Department of Health and going back to treating patients. Applicant

¹ Department Counsel's memorandum is HE IV.

² Tr. 27-35, 90.

³ Tr. 35-41.

is unaware of his brother's current employment status in this department. Applicant last visited his brother in Uzbekistan in 2001. He communicates with him a couple of times a year. His brother has applied for the diversity lottery to immigrate to the United States. Applicant inquires about the status of his brother's application when they do talk. His brother is not married.⁴

Applicant's sister and his two nephews are citizens and residents of Russia. His sister's husband went missing several years ago and has since been declared dead. His disappearance was reported to the police. Applicant explained that there is no information about his whereabouts. He explained his brother-in-law has issues with alcohol and that could have something to do with his disappearance. Applicant's sister is an elementary school teacher. His eldest nephew is in college and the younger one is in middle school. In 2005, Applicant submitted a petition to sponsor his sister to immigrate to the United States. The initial petition was approved and it is now going through the visa processing steps and immigration requirements. Applicant checks online regularly to see the current status of the petition. His eldest nephew is no longer eligible to immigrate under this sponsorship because he is an adult. His younger nephew is included in the petition.⁵

Applicant maintains contact with his sister about once a month through Skype. Applicant's wife also maintains contact with her one to two times a month. Applicant sends her gifts at the holidays and also sends her about \$100 to \$200 a year as a gift.⁶

Applicant's wife's has three brothers and three sisters who are citizens and residents of Kazakhstan. They all live in a small town and have blue collar jobs. Applicant's wife has limited contacts with her eldest sister by Skype because she is the only one with a computer. Applicant does not have any contact with his wife's relatives in Kazakhstan. He assumes when she contacts her eldest sister that other relatives may be present. None of these relatives are interested in immigrating to the United States. Applicant met them once in 2001. After moving to the United States, his wife was interested in maintaining contact with her relatives. That has decreased over the years as she has become more assimilated in the United States.⁷

SOR ¶ 1.d alleges Applicant's wife has two half-brothers who are citizens and residents of Uzbekistan. This is incorrect. Applicant's mother-in-law had a half-brother and this half-brother had two children. These are the relatives alleged in SOR ¶ 1.d. Therefore, they would be half-cousins of Applicant's wife. One of them has since died. Applicant and his wife have no contact with the remaining half-cousin.⁸

⁴ Tr. 43-46, 65.

⁵ Tr. 46-62; AE B is a copy of the immigration application for Applicant's sister and family.

⁶ Tr. 56-62.

⁷ Tr. 65-70.

⁸ Tr. 70-72.

As a precaution, Applicant formally and in writing renounced his citizenship with Uzbekistan.⁹ Applicant has no property in Uzbekistan. All of his assets are in the United States. He estimated he has about \$100,000 in assets. He does not have any delinquent debts. He has filed and paid his past federal income tax returns. He and his wife are geographically separated in the United States while their daughter completes high school. They are hoping to reunite after she goes to college. Applicant's wife is employed. Neither Applicant nor his wife are members or affiliated with any social groups with ties to Uzbekistan, Kazakhstan, or Russia. His wife does belong to a social media chat room where she communicates with some former classmates.¹⁰

Applicant was conscripted to serve one to two months in the Soviet Army after he completed college. He had no choice in the matter. It also was mandatory to be a member of the Soviet Youth party when he was young. If you did not pay the required dues, you were not permitted to have any type of career. Applicant's membership was nominal. This all occurred before the collapse of the Soviet Union.¹¹

Applicant provided copies of certificates of appreciation awarded to him during the period 2008 through 2011. Specifically, the certificates recognized him for his "outstanding support to our nation's safety and security in direct support of the global war on terrorism" and "in grateful acknowledgment of your hard work and patriotism." He also provided a certificate of appreciation for his dedicated service as an interpreter.¹²

Russia

Russia's intelligence services conduct a range of activities to collect economic information and technology from U.S. targets and remains one of the top three most aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly in cyberspace. Non-cyberspace collection methods include targeting of U.S. visitors overseas, especially if the visitors are assessed as having access to sensitive information. Two trends that may increase Russia's threat over the next several years is that many Russian immigrants with advanced technical skills who work for leading U.S. companies may be increasingly targeted for recruitment by the Russian intelligence services; and a greater number of Russian companies affiliated with the intelligence services will be doing business in the United States.

The Russian Federation's intelligence capability is significant and focuses on collection of information from the United States. Russia has targeted U.S. technologies and has sought to obtain protected information from them through industrial espionage.

⁹ AE C.

¹⁰ Tr. 72-83.

¹¹ Tr. 87-90.

¹² AE E.

Russian espionage specializes in military technology and gas and oil industry expertise. As of 2005, Russia and China were the two most aggressive collectors of sensitive and protected U.S. technology and accounted for the majority of such targeting. Russia is a leading arms exporter, with major sales of advanced weapons and military-related technology to China, Iran, Syria, and Venezuela.

In 2010, Russia continued to increase its intelligence-gathering efforts and intelligence capabilities directed against the United States interests worldwide through espionage, technology acquisition, and covert actions. Also in 2010, the United States Department of Justice announced arrests of ten alleged secret agents for carrying out long-term, deep-covered assignments on behalf of Russia.

The threat of terrorism in Russia continues to be significant. Travel in the vicinity of Chechnya may be dangerous, despite Russian efforts to suppress the terrorists. Acts of terrorism include taking hostages and bombings.

Russia has recognized the legitimacy of international human rights standards, but human rights abuses continue. Both Russian federal forces and Chechen rebel forces act with impunity while engaging in torture, summary executions, disappearances, and arbitrary detentions. There are reports of attacks on and killings of journalists, physical abuse by law enforcement officers, extremely harsh and at times life-threatening prison conditions, arbitrary detention, and politically motivated imprisonments. Additional problems include media suppression, and widespread corruption throughout the executive, legislative, and judicial branches, and law enforcement.

The U.S. Department of State reports allegations that Russian government officials and others conduct warrantless searches of residences and other premises and electronic surveillance without judicial permission. This surveillance includes Ministry of Internal Affairs and Federal Security Office monitoring of internet and e-mail traffic. Additionally, Russian law enforcement agencies have legal access to the personal information of telephone and cell phone users.

Uzbekistan

Uzbekistan gained independence from the Soviet Union in late 1991, but maintains close ties with Russia. Uzbekistan is an authoritarian state. Although its constitution provides for a presidential system with separation of powers among the executive, legislative, and judicial branches, in practice, the president and centralized executive branch dominates political life exercising almost complete control over the other branches of government.

Foreign policy in Uzbekistan is highly dependent on presidential decision-making. In 2005, the Uzbek government violently cracked down on unrest in the southern city of Andijon. The U.S. Government and others criticized this crackdown, and in response, the Uzbek government terminated U.S. basing rights in Karshi-Khanabad that were

important to the U.S. military efforts in neighboring Afghanistan. Subsequently, Uzbekistan shifted towards closer ties with Russia and China.

Regional threats include illegal narcotics, trafficking in persons, extremism, and terrorism. Uzbekistan shares a border with Afghanistan and has expressed concern about a potential “spillover” effect of terrorism. Al-Qa’ida remains a threat and has looked to consolidate power with other terrorist organizations in the region.

The U.S. Department of State advises U.S. citizens that potential for terrorist attacks or localized civil disobedience still exists in Uzbekistan. Supporters of terrorist groups are active in the region. These groups and others have conducted kidnappings, assassinations, and suicide bombings, as well as an attack on the U.S. Embassy in Tashkent in 2004.

Uzbek law enforcement uses its powers to suppress legitimate expressions of political or religious belief. In addition to restrictions on religious freedom, the most significant human rights problems include arbitrary arrest and detention; prolonged detention; harsh, even life-threatening prison conditions; torture and abuse of detainees; and denial of due process and a fair trial. Restrictions on freedom of speech, press, assembly and association, movement and communication, and violence against women were also prevalent. Government-organized forced labor, including that of children, is an on-going concern.

Since 2003, Congress has, on several occasions, passed legislation prohibiting or limiting foreign assistance to Uzbekistan, and has blocked certain Uzbek government officials from entering the United States, unless the Secretary of State determines that Uzbekistan has made substantial progress in meeting commitments to respect human rights.

Kazakhstan

Kazakhstan gained independence from the Soviet Union in late 1991. The United States was the first to recognize its independence. Kazakhstan has pursued close relations with Russia and China, as well as the European Union and the United States. Supporters of extremist groups remain active across central Asia. These groups have expressed anti-U.S. sentiments and may attempt to target U.S. Government or private interests in the region, including Kazakhstan. Because of increased security at official U.S. facilities, terrorists are also targeting “soft” civilian targets.

In the wake of recent violent incidents linked to religious extremists, Kazakhstan has tightened government controls over religious organizations. The laws severely restrict the peaceful practice of religion in Kazakhstan. The laws also require law requires religious groups to register and give the government broad power to deny religious organizations legal status and otherwise regulate their activities.

The Kazakhstani constitution concentrates power in the presidency. The president controls the legislature and the judiciary, as well as the regional local governments. Recent elections have fallen short of international standards.

The most significant human rights problems were severe limits on citizens' rights to change their government; restriction on freedom of speech, press, assembly and association; and the lack of an independent judiciary and due process, especially in dealing with pervasive law enforcement and judicial abuse and government corruption.

Policies

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 used 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 overarching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of 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

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (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;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion.

AG ¶¶ 7(a) and (d) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a

foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is not limited to countries hostile to the United States. "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."¹³

Applicant's brother is a citizen and resident of Uzbekistan. Applicant has contact with him a couple of times a year, but has not visited him since 2001. His sister and two nephews are citizens and residents of Russia. He is sponsoring his sister and nephew for immigration to the United States. His wife has three brothers and three sisters who are citizens and residents of Kazakhstan. His wife occasionally has electronic communication with her siblings. All three foreign countries due to their human rights records, terrorism activities, and their governments' intervention into personal freedoms of individuals raise security concerns. I find the above disqualifying conditions apply to the relatives mentioned above. Applicant's wife has a half-cousin in Uzbekistan that neither Applicant nor his wife has contact with. I find there is no security concern regarding this relative.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and conclude the following are potentially applicable:

- (a) the nature of the relationship 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 and interests of the U.S.;
- (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 interests in favor of the U.S. interests; and
- (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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or

¹³ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. Applicant's brother is a citizen and resident of Uzbekistan. His sister and nephews are citizens and residents of Russia. His wife's siblings are citizens and residents of Kazakhstan. It is clear that all three countries have governments that suppress individual freedoms, have terrorist organizations that target U.S. citizens, and Russia specifically conducts espionage against the United States. All three have poor human rights records.

Applicant and his family have lived in the United States since 1998. They have been naturalized U.S. citizens since 2004. He has a son born in the United States. Applicant has worked with the U.S. Government in support of the global war on terrorism. All of his assets are in the United States, and he owns no property in any other foreign country.

Applicant maintains a relationship with his brother and is hopeful his brother can immigrate to the United States. His brother is a doctor. Through his part-time employment, he has some relationship with the Uzbekistan government. His affiliation is unlikely to create a risk of foreign exploitation. Applicant maintains a relationship with his sister and her family. He is sponsoring her for immigration to the United States. Both siblings live in countries that raise concerns. Their positions do not raise any unusual security concerns or place them in a heightened risk scenario. Neither work in high-profile jobs that might be targeted. However, due to the nature of the countries where they live, I cannot find it is unlikely Applicant might be placed in a position of having to choose between the interests of his brother and sister and the interests of the United States. I find AG ¶ 8(a) does not apply. Applicant has repeatedly proved through his work that his sense of loyalty to the United States is deep and he can be expected to resolve any conflicts in favor of U.S. interests. I find AG ¶ 8(b) applies. AG ¶ 8(c) does not apply because Applicant's relationship with his siblings and nephews is more than casual.

Applicant's wife maintains some contact with her siblings in Kazakhstan. It is infrequent, but there is a familial concern. One sibling has a computer and it is through this medium that there may be contact with the others. Applicant's wife's contact is more than casual. Therefore AG ¶ 8(c) does not apply. These relatives are blue collar workers and have no special relationship with their government. Applicant does not have contact with the relatives. It does not appear that this relationship places the relatives in a heightened risk scenario. It is unlikely Applicant would be placed in a position of having to choose between the interests of his wife's siblings and the interests of the United States. I find AG ¶¶ 8(a) and 8(b) apply.

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 the applicant's

conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant applied for and was selected by a lottery to immigrate to the United States. He moved in 1998. He has established his family roots in the United States. He and his family became naturalized U.S. citizens in 2004. He earned a second bachelor's degree in the United States. His daughter is in high school, and he has a son who was born in the United States. His wife has a job. Applicant has not been in Uzbekistan since 2001. All of Applicant's assets are in the United States. Applicant has held a security clearance since 2008, serving the United States in the global fight on terrorism. He has proved he has deep and longstanding relationships and loyalties in the United States. I have considered his demeanor and candor during his hearing. I believe Applicant would resolve any conflict of interest in favor of the United States.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for foreign influence.

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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge