



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00705
	)	
Applicant for Security Clearance <sup>1</sup>	)	

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: E. Kenton Foulke, Esq.

03/27/2014

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to mitigate the Government's security concerns under Guideline B, Foreign Influence. Her eligibility for a security clearance is denied.

**Statement of the Case**

On January 16, 2003, Applicant completed a Questionnaire for Non-Sensitive Positions (Standard Form 95). On January 10, 2008, she completed an Electronic Questionnaire for Investigations Processing (e-QIP), and on August 31, 2012, she completed a second e-QIP. On September 12, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. 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,

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<sup>1</sup> The case is styled using Applicant's surname in her first marriage. Her name changed when she remarried in [redacted] and took her new husband's surname. (Ex. B.)

1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DOD for SORs issued after September 1, 2006.

On September 25, 2013, Applicant answered the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 28, 2014. I convened a hearing by video teleconference on February 19, 2014, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced four exhibits (Ex. 1 through Ex. 4), which were entered in the record without objection. The Government also offered for administrative notice a compilation summarizing facts about Russia, as found in ten official U.S. Government source documents, which were also provided. The Government's summary of the source documents and the source documents were identified as Hearing Exhibit (HE) 2.<sup>2</sup> In a letter dated January 13, 2014, Applicant objected to my taking administrative notice of the documents in HE 2 (HE 3). In a letter dated February 14, 2014, Applicant requested that the administrative notice documents offered by the Government be withdrawn. (HE 4.) At the hearing, Applicant was offered an opportunity to discuss in detail her objections and request for withdrawal. After extended colloquy between the parties on the issue, I denied Applicant's request that the administrative notice documents be withdrawn, and I informed the parties that I would consider relevant facts about Russia, as contained in HE 2, in my Guideline B analysis, pursuant to guidance in the Directive.

Applicant called no witnesses and testified on her own behalf. She offered 16 exhibits, which I marked as Ex. A through Ex. P.<sup>3</sup> The Government did not object to the admission of Applicant's Ex. H, a letter from Applicant's employer. However, the letter contained an extensive discussion of the nature of Applicant's work, and the Government opined that the writer appeared to be making a compelling need request. Accordingly, the Government requested that I give limited weight to those portions of the letter and focus instead on those portions of the letter which provided an assessment of Applicant's character. All other exhibits offered by Applicant were admitted without objection or further comment.

The hearing was continued when the facility providing the video teleconference connection closed for the day. Applicant's hearing was reconvened and concluded on February 24, 2014. DOHA received the transcript (Tr.) of the complete hearing on March 5, 2014.

### **Findings of Fact**

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<sup>2</sup> Department Counsel provided Applicant with a copy of the factual summary and documents, dated November 13, 2013, and identified as HE 2. Department Counsel also provided Applicant with a current edition of DoD Directive 5220.6 and the guideline applicable in this case by letter transmitted January 31, 2014 and identified as HE 1.

<sup>3</sup> Applicant's two exhibit lists are identified as HE 5 and HE 6.

The SOR contains three allegations of security concern under Guideline B, Foreign Influence (SOR ¶¶ 1.a. through 1.c.). In her Answer to the SOR, Applicant admitted SOR allegations 1.a. and 1.b. She denied SOR allegation 1.c. Applicant's admissions are entered as findings of fact.

After a thorough review of the record in the case, including Applicant's testimony, exhibits, relevant policies, and the applicable adjudicative guideline, I make the following additional findings of fact:

Applicant is [redacted] years old. She was born and raised in the Soviet Union. Her parents were employed by the government in work supporting the defense of the Soviet Union. Applicant was recognized as the best student in her high school class, and she received a special stipend from the government in recognition of her academic superiority. She then received the equivalent of an associate's degree from a technical college in her community, and she also received the equivalent of a bachelor's degree from a polytechnic institute, which was also located in her community. (Ex. 1; Tr. 150-154, 227.)

After finishing with her schooling, Applicant elected to bear a child. Her only child, a daughter, was born in [redacted]. Applicant continued living with her parents and working for a government unit in her community. When the Soviet Union collapsed, Applicant decided to leave with her child and immigrate to the United States. After Russian, Applicant's second language was German. However, she began to study English. Soon thereafter, she met an American physics professor through an internet source and began correspondence with him. After a time, he came to Russia to meet Applicant. He then sponsored her on a fiancée visa, and in [redacted], Applicant and her child immigrated to the United States. Shortly thereafter, Applicant married the professor. (Ex. 1; Ex. 3; Tr. 70-75, 257-258.)

After her marriage, Applicant began academic studies at the U.S. college where her husband taught. When he accepted a position at a university in another state, she and her daughter accompanied him. Applicant then began advanced studies in engineering. She earned a Master's degree in [redacted] and a Ph.D. degree in [redacted]. After completing her doctorate, she remained at the university and was employed as a post-doctoral fellow. She was highly respected professionally and received numerous awards for her work. (Ex. 1; Ex. D; Ex. E; Tr. 77-86.)

Applicant became a naturalized U.S. citizen in [redacted], and she acquired a U.S. passport in [redacted]. She traveled to Russia to visit her parents and other family members in December [redacted]. She traveled in Europe on vacation in [redacted]. She used her U.S. passport when she traveled to Europe, although she also possessed a valid Russian passport. She relinquished her Russian passport before becoming the employee of a U.S. defense contractor in [redacted]. She does not have a current U.S. passport. (Ex. 1; Ex. A; Tr. 261-263.)

Applicant divorced her husband in [redacted]. She moved to another part of the United States to take a position as a government contractor. She was first awarded a security clearance in [redacted]. Since acquiring a security clearance, she has taken a position with another government contractor, which is supporting her request for access to classified information. (Ex. 1; Ex. H.)

Applicant's mother, father, and brother are residents and citizens of Russia. Her parents are retired from government-related positions in Russia, and they receive pensions from the Russian government. Applicant's brother was employed by a government entity in Russia for 30 years. Applicant does not know if her brother's worksite required restricted access. He is now employed by a utility. During his career, Applicant's father, an engineer, was the head of a technology division at a Soviet government enterprise. When she was completing her security clearance application, Applicant consulted with her parents to obtain information related to their work, her brother's work, and information about other family members who are citizens and residents of Russia. Applicant's parents know the name and general business of her former employer, a large U.S. defense contractor. They also know she was offered a position in Russia by another large U.S. government contractor. Applicant discussed the offer with her parents and they advised her to decline the job and remain in the United States. (Ex. 1; Tr. 124, 127, 170, 174, 182, 255, 264-265.)

Applicant has two aunts and a niece who are also citizens and residents of Russia. The aunts and the niece live in the same community as Applicant's parents and her brother. This is also the community where Applicant was born, raised, and educated. (Ex. 1; Ex. 4; Tr. 252-254.)

Applicant communicates with her parents by digital teleconference. Because she is concerned about their health, she usually contacts her parents for a teleconference visit once a week. She asserts that she has no contact with her brother, niece, or two aunts. (Tr. 119-120, 254.)

Applicant provided letters of character reference from professors with whom she worked on her advanced degrees. She also provided character references from managers, colleagues, and coworkers. The letters emphasized her extraordinary academic and professional accomplishments and asserted that she possessed diligence and good character. Applicant also provided documentation to show that she is a homeowner and a careful manager of her financial resources. (Ex. C; Ex. D; Ex. F through Ex. P.)

I take administrative notice of the following facts about Russia, which appear in official U.S. government publications and which were provided by Department Counsel to Applicant and to me:<sup>4</sup>

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<sup>4</sup> I have omitted footnotes that appear in the quoted materials.

According to information compiled for the National Counterintelligence Executive's 2011 Report to Congress on Foreign Economic Collection and Industrial Espionage, Russia's intelligence services are conducting a range of activities to collect economic information and technology from US targets, and [Russia] remains one of the top three most aggressive and capable collectors of sensitive US economic information and technologies, particularly in cyberspace. Non-cyberspace collection methods include targeting of US 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 [are] 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.

Russia's extensive and sophisticated intelligence operations are motivated by Russia's high dependence on natural resources, the need to diversify its economy, and the belief that the global economic system is tilted toward the U.S. at the expense of Russia. As a result, Russia's highly capable intelligence services are using human intelligence (HUMINT), cyber, and other operations to collect economic information and technology to support Russia's economic development and security.

On June 28, 2010, the U.S. Department of Justice announced the arrests of ten alleged secret agents for carrying out long-term, deep-cover assignments on behalf of Russia. Within weeks, all ten defendants pleaded guilty in federal court and were immediately expelled from the United States. On January 18, 2011, convicted spy and former CIA employee Harold Nicholson, currently incarcerated following a 1997 espionage conviction, was sentenced to an additional 96 months of imprisonment for money laundering and conspiracy to act as an agent of the Russian government for passing information to the Russian government between 2006 and December 2008.

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. [Russian President Vladimir] Putin's return is unlikely to bring immediate, substantive reversals in Russia's approach to the United States, but because of Putin's instinctive distrust of U.S. intentions and his transactional approach towards relations, it is likely that he will be more confrontational with Washington over policy differences. Continuing concerns about U.S. missile defense plans will reinforce Russia's reluctance to engage in further nuclear arms reductions and Russia is unlikely to support additional sanctions against Iran. Russian intelligence

and security services continue to target Department of Defense interests in support of Russian security and foreign policy objectives.

Although [Russian] law allows officials to enter a private residence only in cases prescribed by federal law or on the basis of judicial decision, authorities [do] not always observe these restrictions in practice. Problems remain. . . due to allegations that government officials and others engaged in electronic surveillance without judicial permission and entered residences and other premises without warrants. The Russian government also requires that telephone and cellular companies grant the Ministry of Interior and the Federal Security Service (FSB) 24-hour remote access to their client databases, as well as requiring telecommunications companies and Internet service providers to provide dedicated lines to the security establishment, enabling police to track private e-mail communications and monitoring Internet activity.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). 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, the administrative judge applies these guidelines 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.

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 in obtaining 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 protect or 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**

Under Guideline B, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

A Guideline B decision assessing the security worthiness of a U.S. citizen with Russian contacts must take into consideration Russia’s aggressive efforts to collect sensitive U.S. economic and technological information. American citizens with immediate family members who are citizens or residents of Russia could be vulnerable to coercion, exploitation, or pressure.

I have considered all of the disqualifying conditions under the foreign influence guideline. The facts of Applicant's case raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(b).<sup>5</sup>

Applicant's mother, father, brother, two aunts, and niece are citizens and residents of Russia. All of these relatives reside in the same Russian community. Applicant's parents, both of whom are retired, receive pensions for work that was related to Russian government defense issues. As a student in the Soviet Union, Applicant was singled out and recognized for her brilliance and achievements. As an adult daughter, she has close and continuing contact with her parents. She communicates with them weekly by digital teleconference. When she was completing her security clearance application, she solicited information from them about her brother and other family members. Applicant's parents are aware of the name and mission of at least one of her U.S. government contractor employers. Earlier in her career, she consulted with her parents when she was offered a position in Russia by another U.S. government contractor.

Applicant states that she does not have continuing contact with her brother, aunts, and niece, and she asserts that she relies upon her parents for information about these relatives. Applicant's brother also has a background as an employee of the Russian government. Applicant denied knowing if he worked in a facility with restricted access, and this fact was not established by the Government.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

Applicant is a loyal and caring daughter. However, her contacts with her parents, and through them with her other family members, raise concerns that she could be

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<sup>5</sup> AG ¶ 7(a) reads: "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." AG ¶ 7(b) reads: "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."



targeted for exploitation, pressure, or coercion by the government of Russia in ways that might threaten U.S. security interests. Applicant's relationships with her father and mother are strong and enduring. Additionally, the record contains evidence that would lead a reasonable person to conclude that Applicant's family might well come to the attention of Russian authorities and become a means through which she could be subject to coercion. It is not possible to conclude that Applicant's relationships with her Russian family members would raise conflicts of interest that she would be able to resolve in favor of U.S. interests.

Applicant failed to rebut the Government's allegations that her relationships and contacts with her family members who are citizens of Russia created a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant's contacts and relationships with these individuals could force her to choose between loyalty to them and the security interests of the United States. (ISCR Case No. 03-15485 at 4-6 (App. Bd. June 2, 2005); ISCR Case No. 06-24575 (App. Bd. Nov. 9, 2007)). I conclude that the mitigating conditions identified under AG ¶¶ 8(a), 8(b), and 8(c) do not apply to the facts of Applicant's case.

Nothing in Applicant's answers to the Guideline B allegations in the SOR or in her testimony at her hearing suggested she was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

### **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 relevant 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 the whole-person concept and all the facts and circumstances surrounding this case.

Applicant is a talented and valued employee of a U.S. government contractor. Since her student days in Russia, she has been respected for her intellectual accomplishments. She is a homeowner and responsible in her financial dealings. Applicant is also a committed and loyal daughter and family member. However, her relationships and contacts with family members who have Russian citizenship raise serious unmitigated concerns about her vulnerability to coercion and her heightened risk for foreign influence.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate the security concerns arising under the foreign influence adjudicative guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.b.:	Against Applicant
Subparagraph 1.c.:	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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Joan Caton Anthony  
Administrative Judge