



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



In the matter of:)	
)	
)	ISCR Case No. 13-00849
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

06/24/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on July 12, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on November 20, 2013, detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on December 4, 2013, and he answered it on December 27, 2013. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on April 1, 2014, and I received the case assignment on April 9, 2014. DOHA issued a Notice of Hearing on April 25, 2014, and I convened the hearing as scheduled on May 15, 2014. The Government offered exhibits (GE) marked as GE 1 through GE 3, which were received and admitted into evidence without objection. Applicant and three witnesses testified. He submitted exhibits (AE) marked as AE A through AE Z, which were received and marked. AE A through AE N were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 22, 2014. I held the record open until May 23, 2014, for the submission of administrative notice documents. Department counsel submitted administrative notice briefs on XXXX¹ and Russia, but did not submit any documents. Applicant did not respond with an objection to information in the briefs, which are marked as Hearing Exhibits 1 and 2.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. After consulting with counsel, Applicant affirmatively waived this right under the Directive. (Tr. 11.)

Objections

At the hearing, Department Counsel objected to the admission of AE P through AE Z on the grounds that the documents were not appropriate for administrative notice and were not fact-specific to Applicant. The objections were overruled, and these exhibits were admitted as personal opinions, which can be considered under the whole-person analysis. (Tr. 100-104)

Request for Administrative Notice

Department Counsel submitted two separate requests that I take administrative notice of certain facts relating to XXXX and The Russian Federation (Russia). The requests were not admitted into evidence, but were included in the record as Hearing Exhibits 1 and 2. The facts administratively noticed are limited to matters of general knowledge, matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

¹The name of one of the two countries involved in this decision is not identified to protect Applicant's personal privacy. The facts in this decision do not specifically identify witnesses by name, names of individual persons, or locations to protect Applicant and his family's privacy. The cited sources contain more specific information.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.f, 1.g, and 1.i of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.c - 1.e and 1.h - 1.k of the SOR.² He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 54 years old, works as a senior military advisor for a federal contractor holding a federal government contract sponsored by the United States Department of State and under the auspices of the North Atlantic Treaty Organization (NATO). Applicant is part of a team of retired U.S. military officers who are working to help transform the military in XXXX's defense structure and operations to conform more closely to western and NATO military operations. Applicant has held a security clearance for 30 years without incident.³

Applicant and his first wife, who was born in South Korea and is now a U.S. citizen, married in 1979 and divorced in 1985. They have one son, who is 33 years old. He is a U.S. citizen by birth and resides in the United States. Applicant's mother, two sisters, and one half-sister are all citizens and residents of the United States.⁴

Applicant enlisted in the United States Army in 1976. As an enlisted soldier, he worked as a military police officer. He left the Army and returned as an officer, retiring in 2003 at the rank of lieutenant colonel and at an O-5 pay grade. The Army sent Applicant to language school to learn Russian. He also obtained a master's degree in Soviet-East European politics.⁵

In the Army, Applicant worked in many positions related to his Russian language skills and background, eventually acquiring the designation of "Russian Expert". He served in the Korean demilitarized zone and in southwest Asia in the first Iraq war. In 1994, he served as an action officer under the the U.S. Chairman of the Joint Chiefs of

²When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

³GE 1; Tr. 26-28, 106, 108.

⁴GE 1.

⁵GE 1; Tr. 107, 121.

Staff in a high-level overseas position. By 1996, Applicant worked as the executive agent for Russian affairs to the commanding general in an armored division. He was assigned to a European country that was behind the Iron Curtain, where he worked and lived with a Russian brigade. He met daily with members of the Russian armed forces, acting as an interpreter because of his language skills. To become a “Russian Expert”, Applicant needed to learn about the Russian culture, make Russian contacts, and generally to immerse himself in local country activities. As an Army officer, his skills provided him with multiple opportunities to work with senior Russian Army officers and NATO staff. While in the Army, Applicant worked as a foreign affairs officer, which required him to periodically travel to Moscow. In his last assignment as an Army officer, he again utilized his knowledge and understanding of Russian areas and the Russian language.⁶

After retiring from the Army, Applicant began working for his current employer in November 2003. His company provides staff to work with countries, including those from the former Soviet Union, who are seeking to transform and to modernize their defense systems. Because of his Russian expertise, his employer immediately assigned him to work in XXXX.⁷ Applicant’s job description includes writing policy, teaching courses, developing training policies and programs, executing training programs, and working with XXXX military and civilian officials. He works directly with the XXXX defense ministry on a daily basis. His job requires him to work in XXXX. XXXX officials often invite him and others at his office to various celebrations and holiday functions. He occasionally socializes with XXXX officials after work. Different ministry officials invite all staff to lunch or dinner. They are required to attend these functions and to use the occasions to talk about the friendship between the countries and their cooperation with each other and to toast their success. Applicant’s job requires him to have good relationships with the host country.⁸

In 2003, Applicant met his wife, who was born and raised in XXXX. She was a citizen of XXXX, who resided in XXXX. They married in August 2004. They have two daughters, ages 7 and 17 months. His wife has a 17-year-old son from a previous marriage, who lives with them part of the time. Applicant’s wife became a U.S. citizen in 2008,⁹ and her son became a U.S. citizen around 2009. Although both daughters were born in XXXX, their birth certificates reflect that they are U.S. citizens born abroad as he and his wife agreed that they would be U.S. citizens. The oldest daughter’s birth was registered through the Department of State consular’s office six days after her birth. The

⁶GE 1; GE 2; AE R, p 8; AE T; AE U; Tr. 35-36, 48, 80-81, 115-116.

⁷Applicant also worked in a European country that was behind the Iron Curtain from January 2005 until June 2008. His wife traveled with him on this assignment. Tr. 39, 71, 132.

⁸GE 1; Tr. 37, 46–47, 66, 80-82, 87, 108-110, 157.

⁹In June 2013, Applicant’s wife received notice that since she was now a U.S. citizen, she would no longer be considered a XXXX citizen. If she wishes to be a XXXX citizen, she must reapply for her citizenship. GE 2, p.7.

youngest daughter's birth was registered 34 days after her birth. Applicant's wife currently operates a fashion business. From 1998 through 2002, she trained in XXXX to be a dental surgeon and worked in this profession for one year. Applicant and his wife file U.S. federal and state income tax returns. Applicant has an active U.S. driver's license and a military identification card for himself and his wife. They plan to live in the United States when his job ends in one to three years, unless his company asks him to work somewhere overseas.¹⁰

After he began working in XXXX, Applicant met and worked with a brigadier general from the XXXX Army, who was a high-level official. The brigadier general is also the uncle of Applicant's wife. The uncle retired from the XXXX Army in 2007. After his retirement, his wife's uncle took a position advising the XXXX minister of defense on veteran's affairs. The uncle asked Applicant for information about how the United States Veterans Administration (VA) was organized and about the type of benefits provided to U.S. veterans and their families. Before he provided any information, Applicant spoke with his program manager. Applicant's program manager determined that providing this type of information fit within the parameters of Applicant's duties in assisting the XXXX government. At the time of the hearing, Applicant did not know what, if any work, this uncle was performing. He sees the uncle in passing every few months and talks with him occasionally.¹¹

Applicant's mother-in-law and father-in-law are citizens and residents of XXXX. His father-in-law was born in the multi-family and business mixed-use building ("mansion"), where Applicant and his family live. His in-laws own the building, rent units in this building for income, and live in the building.¹² Sometime after their marriage, Applicant's wife purchased a one-room unit with a tiny bathroom for \$70,000. They never lived in this unit; rather, his wife gave his mother-in-law the authority to rent the room and retain any rents she collected. Applicant and his wife never received any income from this property. His wife recently gifted her ownership of this property to Applicant's mother-in-law. Applicant co-signed with his mother-in-law a mortgage loan for \$150,000. He has also provided financial support to his wife's fashion business and to his mother-in-law when needed.¹³

In July 2011, Applicant's father-in-law transferred ownership of the top floor of his "mansion" to Applicant's wife. In this transfer, Applicant's wife did not obtain ownership of the entire building; rather, she obtained ownership of only a few rooms. The rooms were not for sale, rent, or business. No one lived in the rooms, although his wife allowed

¹⁰GE 1; GE 2; AE G; AE I - AE K; Tr. 106-107, 114, 133, 135-137.

¹¹GE 1; GE 2; Tr. 124-125, 148-149.

¹²It is unclear from the record as to how Applicant's in-laws obtained ownership of this property. Applicant references the communist system of communal living. From this reference, an inference could be drawn, but is not, that several generations of his father-in-law's family may have lived in the building in the past. GE 3.

¹³GE 1; GE 3; AE F; Tr. 128-131, 138-144.

a part-time seamstress to use some portion of the area. Applicant's wife recently gifted her interest in these rooms to her mother.¹⁴

Applicant's mother-in-law is a conservatory-trained classical pianist, who has taught classical piano for many years. She occasionally watches Applicant's daughters, but a nanny cares for his daughters most days. The United States granted Applicant's mother-in-law a 10-year visa. His mother-in-law has expressed a willingness to move to the United States.¹⁵

Applicant's father-in-law worked in construction. His primary business involved contracts with local governments to install insulation in factories or other businesses. His father-in-law is now retired. He does not have a U.S. visa and is not likely to move to the United States as he is "terrified" of flying. Applicant acknowledges a good relationship with his mother-in-law and father-in-law.¹⁶

Applicant's wife's nephew is a citizen and resident of XXXX. The nephew was a captain in the XXXX Army, but he is no longer a member of the XXXX Army. They see the nephew about once a year. Applicant's wife's teenage niece, whose parents are deceased, is a citizen and resident of XXXX. She lives with Applicant's mother-in-law.¹⁷

Applicant's wife has another uncle who reached the rank of major general in the XXXX army and served as a high-level official in XXXX. He is now retired and may operate a sausage business. Applicant and his wife see this uncle at family functions once a year or less.¹⁸

Applicant's wife has a brother, who Applicant identified as a specific foreign contact. On his e-QIP, Applicant said the following about his brother-in-law, whom he indicated held both a XXXX and Russian citizenship and lived in Moscow:

As I understand his line of work, he is an arbitrator. He settles disputes between businessmen. For that part of the world, I do not ask where he works or what he does as it is factual bad form. As a matter of fact, I avoid intentionally and seldom visit. This is such a unique situation that I probably need to discuss in person with one of you people but here it is in a nutshell. G..... is a XXXX and my brother-in-law. He moved to Moscow from [XXXX] about 10 years ago and is now a successful

¹⁴GE 3; AE E.

¹⁵Tr. 116, 137-138, 145-146.

¹⁶GE 2; Tr. 123-124, 137, 147-148.

¹⁷GE 1; GE 2; Tr. 122-123.

¹⁸GE 2; Tr. 125-126, 152.

businessman and Russian citizen. We seldom visit and I am not comfortable asking precisely what he does as it is bad form. . . .¹⁹

At the hearing, Applicant explained that his view, that it was “bad form” to ask a person about what they do in their job, came from his professional training and his past work with delegations. In his experience, if someone is asking questions, then that person is collecting information. If he asked someone about what they do in their job, that person would be insulted as would Applicant if a person started asking questions about his job. These questions are not asked in the work he does.²⁰

In his response to interrogatories, Applicant again stated that his brother-in-law had XXXX and Russian citizenship and that his brother-in-law had just moved back to XXXX with his family. In his response to the SOR and at the hearing, Applicant denied specific knowledge as to his brother-in-law’s dual citizenship because he does not know this for a fact, and he cannot prove it. Applicant knows that his brother-in-law owned a house in XXXX. He last saw his brother-in-law about one year ago. His wife and brother-in-law are currently estranged. His father-in-law is not talking with his brother-in-law, but his mother-in-law does communicate with the brother-in-law occasionally. Applicant also denied that his brother-in-law worked as an official of the Russian government.²¹

Following the above statement about his brother-in-law, Applicant provided the following information about a friend of his brother-in-law:

. . . G.... has a best friend named R.... whom he introduced me to who G.... says works security for . . . and/or the former. . . . [intelligence official]. Not sure which former chief but his wife goes by the name of A. . . . Not sure of A.....’s spelling, but that is how it is pronounced. I do not know R.....’s last name. I do not know exactly who he works for other than what is stated here and I am not asking as it is bad form and frankly, I do not want to know. I think G..... also settles disputes for A..... but I am not certain of that. When I visit Moscow I usually see R..... as he and G..... seem to work together. Once my wife and I had dinner with G..... and A..... at a XXXX restaurant. None of us talk/talked business. I have never told R.... what I do and he has never told me what he does. But according to G....., R..... knows I was an Army ranger and as a result, R.... respects me. I glean this information from my brother-in-law. I have never been in R.....’s house but G..... did take me to his apartment complex to show off his motorcycle; as R..... knows from G..... I ride a motorcycle. Because R..... is an important; wealthy and well-connected

¹⁹GE 1, p. 30, 40, 52, 54.

²⁰Tr. 158.

²¹GE 1; GE 2; Tr. 118-119, 153.

person for my brother-in-law; I gave him a gift of my motorcycle jacket. Actually, I gave it as a gift to G..... and it was his idea for me to present it to R..... as it would make good points for G..... So I did. R....., in turn gave me one of the usual watches from the official Government protocol offices. Additionally, G..... and I visited R.....'s family's house about an hour outside Moscow. We had a cookout; I met R.....'s father, who according to G....., is a retired [intelligence official]. We had a nice; introductory dinner and saw where R..... is building his new mansion down the street from his father. This has been the extent of our contact and interaction. Listening to G..... talk, R..... is worth over 30 million dollars and G..... manages his assets for him.²²

Applicant advised that this initial contact occurred around 2006. Over the next eight years, two additional in-person contacts with R took place, one in Moscow and the last in XXXX. Likewise, several telephone conversations with R occurred when Applicant or his wife called G. R never asked about Applicant's work. After a third in-person contact, Applicant reported it to his superiors, who took no action. Given that he interacts with many foreign nationals each day, he did not report his first contacts with R because R did not ask any inappropriate questions or appear to be interested in the work Applicant did, and the contact did not seem to rise to any level which would be of concern to the U.S. Government.²³ Applicant describes R as a dysfunctional, alcoholic bachelor who is most concerned about his money. Applicant denies any additional meetings with A or with R's father after 2006 when he met A at a XXXX restaurant in Moscow while having dinner with G.²⁴

Three witnesses testified on Applicant's behalf. The major general retired from the Army after 33 years of service. Following his retirement, the major general worked for Applicant's employer for 13 years, leaving in January 2014. He explained that Applicant's employer held a contract with the U.S. Government to provide services to XXXX to bring defense transformation using western principles. The goal of this contract has been previously explained. The major general has known Applicant since the fall of 2003 and has meet his wife at business dinners and events on several occasions. He explained that Applicant's job requires him to be in contact with XXXX officials, which means military staff officers and others, everyday. He read the SOR and is aware of the Government's concerns. He has never questioned Applicant's integrity or trustworthiness, and he does not have a concern about Applicant holding a security clearance. The major general also provided a written statement, in which he also states that Applicant's loyalty and fidelity to the United States are beyond question. After meeting Applicant's wife and knowing the family situation, the major

²²GE 1, p. 30, 40, 52, 54.

²³Applicant states that information about him can be determined from the XXXX defense ministry website during certain events or exercises as the website states what he does to assist the XXXX defense ministry. GE 2.

²⁴GE 1; GE 2; Tr. 127-128.

general has never had a concern that Applicant's marriage and family arrangement could have any impact on Applicant's work or ability to act in the best interests of the United States.²⁵

Applicant's program manager, a retired colonel with 26 years of service, also testified. He reaffirmed Applicant's job requirements to provide advice and support to the Ministry of Defense in XXXX on behalf of the United States and the goals of the program. Applicant works with XXXX officials, who hold him in the highest esteem for honesty, integrity, and professionalism. He has met Applicant's wife and some of her family members, including the retired brigadier general. He has no concern that his wife is a national security risk as he has known them for six years. He does not believe that Applicant could be coerced or pressured to reveal classified information because of his wife's family. The colonel also wrote a letter of recommendation generally stating as he testified. He indicated that he had reviewed the SOR and believed the concerns cited after being revealed by Applicant had been taken out of context.²⁶

Applicant's third witness was a retired brigadier general with an extensive background in military intelligence and security clearance issues, having spent 25 years as a military intelligence officer in the Army. At his last command, the brigadier general was responsible for safeguarding classified information at the highest levels and for permitting access to information. The brigadier general teaches courses in basic national security, counterintelligence, and counterterrorism for a national security studies program at a military university. Because of his background and experience, he considers reliability and credibility the issues he needs to consider for access. When he needs to determine if a person is in an espionage situation, he looks for greed, ideological beliefs, pressure from other institutions or government, and not being married to a foreign national. The brigadier general stated that he has had personal contacts with ex-KGB officials. To him, these contacts are marginal. Contacts should be reported if questions or discussion arose about national security or classified information.²⁷

Applicant worked for the brigadier general from August 2008 until June 2011, when the brigadier general left his job. During this time, the brigadier general worked with Applicant sometimes daily and other times two to three times a week. He has met Applicant's wife, his children, her parents, and one or two of her siblings. He has been to Applicant's home. He reaffirmed that Applicant's job requires him to meet with XXXX political and military officials and that as a "Russian Expert", he is required to immerse himself into the culture. If he did not, Applicant would not be doing his job. After reading the SOR, the brigadier general does not view Applicant's family contacts as a security concern. Knowing Applicant, his strong beliefs, and his absolute dedication to the

²⁵Attachment to Response to SOR; AE A; Tr. 23-41.

²⁶Attachment to Response to SOR; AE A; Tr. 44-68.

²⁷Tr. 70-98.

United States, the brigadier general emphatically denied that Applicant could be pressured or coerced to release classified information because of his wife's family. The brigadier general also wrote a letter of recommendation on behalf of Applicant.²⁸

In addition to his witnesses, Applicant submitted 17 letters of recommendation from two generals and 15 colonels, all retired from military service. Some worked in military intelligence and others in special forces. All have high praise for his work skills. This statement by one writer, "I have never met a more honest, candid, professional, dedicated or trustworthy person or a more loyal American" is essentially repeated in every letter of recommendation. The SOR was reviewed by 14 of the 17 writers, who understand the issues of concern raised. These 14 individuals know and have met Applicant's wife and extended XXXX family. All do not believe Applicant's family relationships are a reason to deny him a security clearance. His program manager stated the following in his letter of recommendation:

Shortly after meeting [Applicant], I met his wife and her family. [Applicant] informed me of his in-laws, some of whom reside in Moscow. Naturally, my radar went up and I asked him about potential security risks associated with that situation. He informed me that he is careful to speak to the in-laws... even those who do not live in Moscow... only about family-related issues. My personal observation during the course of more than 3 years is that [Applicant] does an excellent job of separating family business and work-related business.

As an infantryman entrusted with a security clearance myself, I am ever-vigilant in validating security in my dealings with others, so I have put [Applicant] through the appropriate scrutiny to ensure that he does not play fast and loose with security. I am aware that a person could violate security either intentionally or accidentally. In [Applicant's] case, my observation is that he will certainly not violate security intentionally, and that he is vigilant about not violating security accidentally.

The retired lieutenant general also described Applicant as a "man of great trust, integrity, and honesty, and a man whom I trust as a loyal professional" The lieutenant general stated that Applicant was sought because of his in-depth understanding of military operations, training, and the Russian language and culture. Each letter writer strongly recommends granting Applicant a security clearance.²⁹

I take administrative notice of the following facts about XXXX and the Russian Federation, which appear in official U.S. Government publications.

²⁸Attachment to Response to SOR; AE A; Tr. 70-98.

²⁹AE A.

XXXX

XXXX is a unitary, semi-presidential republic with a government elected through a representative democracy. Under its constitution, the executive branch reports to the prime minister, a unicameral parliament, and a separate judiciary. The government is accountable to parliament. The President is the head of state and commander-in-chief. The government of XXXX generally respects freedoms of religion, speech, press, free assembly, and association.

The United States established diplomatic relations with XXXX in 1992 following its separation from the Union of Soviet Socialist Republic (U.S.S.R.) in 1991. Since its independence, XXXX has made impressive progress fighting corruption, developing modern state institutions, and enhancing global security. The United States is committed to helping XXXX deepen its Euro-Atlantic ties and strengthening its democratic institutions. To help achieve this goal, the United States has signed a bilateral investment treaty and a bilateral trade agreement. Both countries actively support these agreements through trade and investment. XXXX works closely with the United States on counterterrorism-related issues. XXXX passed enhanced counterterrorism legislation.

Because of complaints and allegations of corruption, the new government charged 50 members of the prior administration with a variety of crimes, including obstruction of power, misappropriation of government funds, money laundering, blackmail, privacy intrusion, and abuse of power. Some human rights violations, including torture and other inhumane treatment, do occur. Allegations of poor conditions in prisons are being investigated by the government. XXXX experiences problems with sex trafficking and lack of aggressive prosecution for these crimes. The record lacks any evidence that XXXX seeks to collect U.S. classified information or targets U.S. citizens for classified information in the United States or abroad.

The Russian Federation (Russia)

The Russian Federation (Russia) is composed of 21 republics. It achieved independence with the dissolution of the U.S.S.R. on August 24, 1991. It has a centralized political system, with a bicameral legislature, a weak judiciary, and power concentrated in the president and prime minister. Russia's large population of more than 142 million people is both multinational and multi-ethnic. Russia is a nuclear superpower which, since the dissolution of the U.S.S.R., continues to develop politically, socially, and economically.

The United States and Russia share certain common strategic interests in counterterrorism, the reduction of strategic arsenals, and control of the proliferation of weapons of mass destruction and the means to deliver them. The Cooperative Threat Reduction (CRT) program was launched in 1992 to provide for the dismantlement of weapons of mass destruction in the former U.S.S.R. The CRT program was renewed in 2006 for seven years, until 2013.

Since 2003, U.S.-Russian relations have often been strained. Tensions between the United States and Russia increased in August 2008, when Russia sent its army into the Republic of Georgia. By the end of 2008, U.S.-Russian relations were at a ten-year low and were characterized by mutual distrust and adversarial drift. The resetting of U.S. relations in 2009 offered opportunities for the creation of a new START treaty, which was completed and entered into force in February 2011. The two countries continue to work closely on initiatives designed to address threats of nuclear terrorism. Russia's recent decision to establish a military presence on the Crimean peninsula of Ukraine and to declare it independent of Ukraine and part of the Russian Federation has caused an increase in the tensions between United States and Russia. The profound policy differences between the United States and Russia continue.

Russia'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. Russian espionage specializes in military technology and gas and oil industry expertise. In addition to its technology collection and espionage activities against the United States, Russia supports missile programs and nuclear and biotechnology projects to China, Iran, Syria, and Venezuela. Cyber attacks against the United States continue to increase in number and sophistication, and Russia remains a primary sponsor of cyber attacks against U.S. military installations and interests.

Russia's internal problems include terrorism and a poor human rights record. Human rights abuses include: reports that the government or its agents committed politically-motivated killings and other arbitrary killings; credible reports that law enforcement engaged in torture, abuse and violence; extremely harsh and life-threatening prison conditions; and arbitrary arrest and detention.

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 users of telephone and cell phone services. In addition, adults must carry internal passports when traveling within the country, and must register with local authorities within a certain time after arriving at a new location.

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.

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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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

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:

(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;

(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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's mother and sisters are citizens and residents of the United States. These family members do not raise a security concern. Applicant self-reported on his e-QIP that in 2006, he had dinner with his brother-in-law, R, a male friend and business associate of his brother-in-law, and A, a female friend of R and the wife of an unidentified former intelligence officer, in Moscow. He has not had any subsequent contact with A. Given that this took place about eight years ago and Applicant never met with A again, this one-time contact with A is too tenuous and too distant to be a security concern. The Government has not established a security concern under AG ¶¶ 7(a) or 7(b) in allegation 1.i, which is found in favor of Applicant.

Applicant's wife, stepson and two daughters are citizens of the United States living in XXXX. Applicant and his family live in an apartment in a building where his father-in-law was born and which is primarily owned by his in-laws, who also live in the building. His wife's minor niece lives with his in-laws. Applicant's father-in-law worked as a contractor in the building industry. Most of his work came from the XXXX government before and after it was a communist state. Applicant's brother-in-law is a

citizen of XXXX, who lived in Russia for 10 years and may also be a Russian citizen, but has returned to live in XXXX. His brother-in-law still conducts business in Russia and has Russian friends and business associates. On several occasions, Applicant has met or spoken with one of his brother-in-law's friends, who is rumored to provide security for high-level Russian officials or a former high-level intelligence officer. As of the hearing, Applicant and his wife were estranged from her brother. Applicant's wife has two uncles who were high-ranking XXXX military officers. Both are now retired. His wife's nephew served in the XXXX Army, but is no longer a member of the XXXX Army. In addition to his family relationships, Applicant has cosigned a \$150,000 mortgage with his mother-in-law and has provided periodic financial support to her. He also provides funds to his wife's fashion business, which is based in XXXX. His property and family connections are not *per se* a reason to deny Applicant a security clearance, but must be considered in deciding whether to grant Applicant a clearance.³⁰ The Government must establish that these family relationships create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and to protect his property interests. Applicant interacts with foreign officials and foreign military officials on a daily basis because of his job.

In determining if such a risk exists, I must look at the activities of the Governments of XXXX and Russia and terrorist organizations within XXXX and Russia, and the risk that Applicant could be targeted because of his property interests and family relationships. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's property interests and family relationships in XXXX raise a heightened risk and a security concern because of Russia and the activities of the Russian government. The evidence of record fails to show that the XXXX government targets U.S. citizens in the United States or in XXXX by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the XXXX government will seek classified information is moderate. The same cannot be said of the Russian government, which actively seeks classified military, technology and industrial information from the United States.³¹

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's property interests and family relationships in XXXX cause security concerns, I considered that XXXX and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the XXXX government targets U.S. citizens for protected information. The human rights issues in XXXX continue to raise some concern. Efforts are underway to correct problems within the political and prisons systems in XXXX after concerns were raised. While none of these considerations by themselves dispose

³⁰ISCR Case No. 09-06457 (App. Bd. May 16, 2011).

³¹*Id.*

of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his property interests and family relationships in XXXX. In weighing all the factors, I conclude that Applicant's family and property interests raise a heightened risk under AG ¶¶ 7(a), 7(b), (d), and 7(e).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Applicant's contacts with his wife's uncle, who is a retired senior officer from the XXXX army, are infrequent now. Applicant's wife's nephew is no longer a member of the XXXX Army. Applicant and his wife see them maybe once a year at family functions, but do not have regular contact with these individuals. Applicant has mitigated any security about these extended family members under AG ¶ 8(c).

Applicant first met his wife's uncle, who is a retired senior officer from the XXXX army, when he began working in XXXX. At that time, this uncle-in-law was an active duty military officer with whom Applicant worked as part of Applicant's job. Applicant works with many military and civilian XXXX officials daily. Since this uncle retired, Applicant's contacts are every four or five months and related more recently to family matters. When this uncle inquired about VA programs and benefits in the United States, Applicant discussed the request with his supervisor before revealing any information generally available to the public or generally known in the military. Applicant is vigilant and careful about responding to requests for information from foreign nationals. Security concerns about his contacts with this uncle are mitigated under AG ¶¶ 8(d) and 8(e).

Applicant's mother-in-law, a classically-trained pianist, gives piano lessons and occasionally cares for his young daughters. She also cares for his wife's orphaned

teenage niece. She does not work for the XXXX government nor has she in the past. His wife's niece is a teenager, who has no connection to the XXXX government. His father-in-law retired from the construction business and no longer has any connections with the XXXX government. Before XXXX became an independent nation, his father-in-law's business contracts came from or through the XXXX government under the communist system. Since 1992, his construction contracts arose from government and non-government sources. At this time, his father-in-law and mother-in-law maintain a large, privately-owned family building, which has rental apartments and rental business space, including their personal residences and Applicant's family residence. Applicant co-signed a \$150,000 loan with his mother-in-law to help with her ownership of this property. This loan does not create a financial burden for Applicant. His in-law's business interests in this building do not raise a conflict of interest for Applicant nor do these business interests place Applicant in a position where he would have to choose between the interests of the United States and the interests of these family members. Applicant's loyalties lay first with the United States, not his in-laws. Security concerns about his in-laws and his wife's niece are mitigated under AG ¶ 8(b).

Prior to his marriage to his XXXX-born wife, Applicant advised his supervisor about his relationship. His current supervisor has observed Applicant, has met his wife and her family, and has observed how Applicant separates his family business and work-related business. His managers at work are aware of his marriage and have met his wife. None of them perceive his marriage as a reason to deny Applicant a security clearance. His wife has a fashion business, which she owns. His wife and his daughters live in XXXX because of his job and will move with him to the United States when his overseas work ends. His stepson decided to become a U.S. citizen. He is a teenager with no established ties to the XXXX government. Prior to the hearing, when he realized the United States Government had a concern about the property owned by his wife, she transferred her property ownership to her mother. Applicant has mitigated any security concerns about his wife, stepson, and property holdings under AG ¶ 8(b).

Applicant reported to the proper U.S. authorities his contacts with R, his brother-in-law's Russian friend. Applicant cannot definitively establish that his brother-in-law is also a Russian citizen, but has surmised that it is possible since his brother-in-law lived in Russia for 10 years. His brother-in-law is a businessman who conducts business in Russia. The nature of the brother-in-law's business or of R's business is not known, as it is not appropriate for Applicant to inquire about his brother-in-law's business or about the friend's business. Any contacts with individuals connected to the KGB are infrequent, casual, and non-business related. Applicant does not maintain any direct contact with R, and at this time, he and his wife are estranged from his brother-in-law. These contacts are not a source of conflict for Applicant, because he will place the interests of the United States ahead of any possible sense of loyalty or obligation he might feel to these individuals. He has mitigated any security concerns about these individuals under AG ¶¶ 8(b) and 8(e).

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant enlisted in the Army as a young man, where he worked as military police enlisted soldier. He left the Army and later returned as an officer. The Army, on behalf of the United States Government, decided to send him for Russian language training. He also obtained a masters degree in Soviet-East European politics with the support of the Army. When he completed his studies and training, the Army assigned Applicant to various positions in Europe, including Eastern Europe, which required him to immerse himself in Russian culture and society. In 1996, he lived and worked with a Russian brigade in a former Iron Curtain country. The natural consequence of his actions is further development of his knowledge of Russian culture and advancement of his Russian language skills. Eventually, the Army designated Applicant a "Russian Expert". His employer hired him because of this designation and immediately assigned him to work in XXXX, where his years of experience would be important and useful. Applicant's job requires him to live in XXXX, where he has lived for the last six years continuously. He also lived in XXXX from the fall 2003 until the fall 2005 when he, his wife, and his daughter moved to another former Iron Curtain country at the direction of

his employer. His job requires him to interact with XXXX officials and military officials on a daily basis. His many years working as a foreign affairs officer provided him with extensive and valuable knowledge about Russia, including XXXX, its language, and its culture and gave him excellent skills for working with foreign governments. His backgrounds makes him an asset to the United States.

Applicant's background and experience taught him how to interact with foreign officials. He learned what to say and what not to say. He is extremely cautious about the statements or comments he makes in social and business settings. He is acutely aware that persons connected with foreign governments or foreign businesses are always seeking relevant information from Americans, including him. He is conscious about inappropriate or potentially inappropriate requests by foreign officials or others. He knows he must report any such requests to his superiors, and he does. The biggest concern is his brother-in-law and R, his brother-in-law's friend. Any connection R may have to the Russian intelligence is rumor, not fact, as is any assertion that he is a high-level Russian official or is closely connected to any high-level Russian official. Applicant is extremely cautious when around both his brother-in-law and R. In the eight years since he met R, Applicant has never contacted R, and R has never directly contacted him. Their contacts are only through his brother-in-law. Unlike the American way, Applicant does not ask R about his work, and R does not ask Applicant about his work because it is an inappropriate topic of conversation. Applicant made a conscious decision to limit his contacts with his brother-in-law and R. He has reported his contacts with R, even though the contact was not for any specific information about the United States or his job. His management has not shown any serious concern about the contact. Based on his 30 years of holding a security clearance and his many years of work, Applicant knows he must report any requests for information or unusual contacts by R or anyone else. Casual contacts with foreigners is not what is important. What is important is the seeking of information by foreigners. Applicant is acutely aware of this. He follows proper protocols and notifies his superiors of anything remotely suspicious.

Applicant's two young daughters were born in XXXX. Applicant immediately registered their birth with the U.S. Department of State which issued birth certificates indicating they were U.S. citizens born abroad. He and his wife pay U.S. federal and state income taxes and plan on living in the United States when his job ends.

Applicant requested permission from his supervisor to provide information about VA benefits and programs for U.S. military members to his wife's uncle. By so doing, Applicant showed good judgment and the ability to exercise discretion. Likewise, his reports to his supervisors about meeting R reflect not only good judgment, but the depth of his understanding about what he believes he must report. If Applicant is to be pressured or coerced, the source would more likely come from job contacts than because of his wife or her family.

Applicant's witnesses and references all have high praise for his honesty, reliability, dependability and trustworthiness. They have worked with him, and many know his wife. The brigadier general credibly testified when there is a potential for an

espionage situation, he looks at an individual for greed, ideological beliefs, and pressure from other institutions and government, not marriage to a foreign national. His answer reflected the type of judgment calls required by persons who regularly make these decisions in the field. Based on his many years of work in the intelligence field and his work with Applicant, the brigadier general knows the flags which raise a security concern, and Applicant's marriage is not one of them. Knowing Applicant's strong beliefs and his absolute dedication to the United States, the brigadier general stated with certainty that Applicant could not be pressured or coerced to release classified information because of his wife's family. Applicant's other witnesses and 17 letters of recommendation from two generals and 15 colonels are of the same opinion. The lieutenant general described him as a "man of great trust, integrity, and honesty, and a man whom I trust as a loyal professional"

Having reviewed the security concerns raised in the SOR, the ongoing tension between the United States and Russia, Applicant's limited contacts with Russia, and the evidence presented in mitigation, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign influence under Guideline B.

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.l:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge