



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



In the matter of: )  
)  
) ISCR Case No. 14-00320  
)  
Applicant for Security Clearance )

**Appearances**

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

10/08/2015

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**Decision**

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COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On April 22, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The DOD CAF acted 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 Department of Defense on September 1, 2006.

Applicant answered the SOR on August 25, 2014, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's File of Relevant Material (FORM) on April 2, 2015.<sup>1</sup> The FORM was mailed to Applicant and he received it on May 29, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted several documents, which I marked as Items A1 through A10 and admitted into the record. The case was assigned to me on August 25, 2015.

## Procedural Ruling

### Administrative Notice

I took administrative notice of facts concerning the country of Russia. Department Counsel provided references to supporting documents that verify, detail, and provide context for the facts stated in the FORM. The facts are summarized in the FORM and will not be repeated in the Findings of Fact. Reference to some of the facts about Russia contained in the FORM will be made in the Analysis section.

Administrative or official notice is the appropriate type of notice used for administrative proceedings.<sup>2</sup> Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports.<sup>3</sup>

### Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations with explanations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 50 years old. He is a native-born U.S. citizen. He is married and has five children. He served in the Army from 1984 to 2004 and retired with an honorable discharge. There is no information about his rank other than he was an enlisted service member. He has worked as a security manager for a government contractor since 2010.<sup>4</sup>

Applicant has the following relatives who are residents and/or citizens of Russia:

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<sup>1</sup> The FORM included as evidence Items 1-20. I admitted Item 1-4 into the record, Items 5-20 are administrative notice items, which will be discussed *infra*.

<sup>2</sup> See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)).

<sup>3</sup> See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

<sup>4</sup> Items 3, 5.

1. His wife is now a U.S. citizen and she has a U.S. passport. She was naturalized in March 2015. She has no loyalty or obligation to Russia. She lives in the United States. She works as a caregiver and housewife. She communicates with her mother (once a week) and father (every three months) who reside in Russia. All communication is about family matters. She communicates with her two brothers who reside in Russia about every six months.<sup>5</sup>

2. Two of Applicant's daughters (his wife's daughters) are citizens of Russia, but reside in the United States with Applicant and his wife. Applicant adopted these two daughters. Both daughters have applied for U.S. citizenship. Both attend school in the United States. They have no loyalty or obligation to Russia. They communicate infrequently with their Russian grandparents and uncles about family matters.<sup>6</sup>

3. His father-in-law and mother-in-law. Applicant does not speak Russian and only communicates with his in-laws through his wife. His in-laws are disabled pensioned senior citizens who have no political or government affiliations.<sup>7</sup>

4. His two brothers-in-law. Both work for a joint stock oil company. Applicant, through his wife, only has contact with them about every six months. There is no evidence of any Russian government affiliations by either of them.<sup>8</sup>

Applicant is supported in his effort to gain a security clearance by contractor and diplomatic personnel who worked with Applicant in various positions in Columbia and Iraq. Those people include a senior State Department officer and an in-country program manager. One example of the high regard Applicant is held by these people is the following excerpt from a letter: "He is a completely trustworthy American of outstanding moral character, and I would personally trust him to ensure protection of my life in a situation of danger or jeopardy." His civilian job appraisals from 2010 through 2015 consistently rate him in the highest category, which is "exceeded expectation."<sup>9</sup>

## **Policies**

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<sup>5</sup> Items 2, 5; A1, A4-A5.

<sup>6</sup> Items 2, 5.

<sup>7</sup> Items 2, 5.

<sup>8</sup> Items 2, 5.

<sup>9</sup> Items A2-A3, A6-A10.

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, 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 explains the security concern about “foreign contacts and interests” stating:

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 indicates conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(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.

The mere possession of close family ties with a family member living in Russia is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship of Russia with the United States places a significant, but not insurmountable burden of

persuasion on Applicant to demonstrate that his relationships with his relatives living in Russia do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Russia who might be coerced by governmental entities.

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.”<sup>10</sup> Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives from Russia seek or have sought classified or economic information from or through Applicant, or his relatives living in Russia, it is not possible to rule out such a possibility in the future. Department Counsel produced substantial evidence to raise the issue of potential foreign influence.

AG ¶¶ 7(a) and 7(b) apply because of Applicant’s relationships with his relatives who live in Russia. AG ¶ 7(d) applies because he resides with his two step-daughters. Applicant communicates with these Russian relatives on a sporadic basis. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members, including in-laws. Applicant has not attempted to rebut this presumption. Given Russia’s aggressive intelligence approach toward the United States, Applicant’s relationships with his relatives living in that country are sufficient to create “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(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; and

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<sup>10</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

(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.

AG ¶ 8(a) partially applies. Applicant's in-laws are not in government positions and do not have affiliations with the Russian government. Applicant's immediate family resides in the United States and he has limited contact with his in-laws. It is unlikely that Applicant would be placed in a position of having to choose between his in-laws interests and those of the United States. AG ¶ 8(c) does not apply to these in-laws.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He is a native-born U.S. citizen who honorably served in the Army for 20 years before he retired. He has since worked for government contractors supporting U.S. interests throughout the world. In performing his duties, he earned the admiration and respect of a co-worker and a diplomat with whom he served. The evidence supports that Applicant has longstanding loyalties toward the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

### **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. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance at this time. I considered the ties he established in this country and his military service, thereby demonstrating his longstanding loyalty to this country. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall 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 under Guideline B, 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.c:	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.

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Robert E. Coacher  
Administrative Judge