



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



In the matter of:)
)
) ISCR Case No. 14-01138
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

08/22/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings and exhibits, I conclude that Applicant has not mitigated the security concerns related to foreign influence and foreign preference. Accordingly, his request for a security clearance is denied.

Statement of the Case

On April 29, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline B (foreign influence) and Guideline C (foreign preference) of the Adjudicative Guidelines (AG).¹ In his May 12, 2014 Answer to the SOR, Applicant admitted the allegations under Guidelines B and C, and requested a decision without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a file of relevant material (FORM) dated June 12, 2014. It

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all security clearance adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

also contained five government exhibits (Items 1-5)² and 14 U.S. Government documents related to Russia. DOHA forwarded the FORM to Applicant, who received it on June 16, 2014. He was given an opportunity to respond with documentation to refute or mitigate the allegations. Applicant did not submit documentation. The case was assigned to me on August 7, 2014, for an administrative decision based on the record.

Procedural Ruling

I take administrative notice of facts related to Russia, included in the U.S. Government documents provided by Department Counsel. The facts are limited to matters of general knowledge, and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings and the FORM, I make the following additional findings of fact.

Applicant, 46 years old, was born in Russia. He served two years in the Soviet Army, concluding his service in 1988. In 1993, he earned a master's degree in physics at a Russian university. Applicant came to the United States in 1995. He earned a doctorate from a U.S. university in 2000. He became a naturalized U.S. citizen in March 2010. He is a dual citizen of Russia and the United States. Applicant has worked for the same defense contractor since 2002. As of 2013, his title was senior scientist. (Item 4)

In 1990, Applicant married his wife in Russia. She is a dual citizen of Russia and the United States, and resides in the United States with Applicant. She became a naturalized U.S. citizen in 2010. Applicant and his wife have a 16-year-old daughter who was born in the United States. She is a dual citizen of Russia and the United States. (Item 4)

Applicant's parents and sister are citizens and residents of Russia. Applicant has weekly contact with his parents and his sister by telephone and electronic means, such as email via the internet. Applicant's mother and father are 79 and 83, respectively. He provides them with financial support. Over the years, he has given them a total of approximately \$15,000. The file does not contain information regarding the marital status, family, or occupation of his sister, or of any siblings his wife may have in Russia. (Item 4)

As of May 2013, when Applicant completed his security clearance application, his mother-in-law lived at his address in the United States. He has daily contact with her.

² The Government included a report of Applicant's security interview with an agent of the Office of Personnel Management (OPM) on July 24, 2013. (Item 5) The document is unsigned by Applicant, and shows no indication that he reviewed it for accuracy, or adopted its contents. Therefore, I will not consider the information in Item 5 in reaching my conclusions.

She is a dual citizen of Russia and the United States. Applicant's relationship with his mother-in-law is not alleged in the SOR.³ (Items 1, 4)

Applicant has an ownership interest in two properties in Russia. He co-owns, with his parents, the apartment where they live. Its approximate value is \$100,000. He also owns a vacation home. He estimates its value at \$10,000. Applicant's security clearance application indicates that he has lived in the same U.S. property, which he owns, since 2002. However, there is no evidence showing the value of that property, or the value of any other U.S. property, financial interests, or assets Applicant may have. (Items 3, 4)

Applicant maintains his Russian citizenship, and holds a valid Russian passport. He obtained his current Russian passport in 2009, and it expires in December 2014. Applicant used it to travel to Russia to visit family in May 2010, after becoming a U.S. citizen in March 2010. He also visited his family in Russia, using his foreign passport, in 2011 and 2013. He stated in his Answer to the SOR that he maintains his Russian passport “[f]or the sole purpose of traveling for family reasons.” (Items 3, 4)

Administrative Notice: Russian Federation

The Russian Federation (Russia) comprises 21 republics, created at the dissolution of the Union of Soviet Socialist Republics (U.S.S.R.) on August 24, 1991. It has a centralized political system, with a bicameral legislature, a weak multi-party political system, and power concentrated in the president and prime minister.

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.

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, relations were at a ten-year low. 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 work closely on initiatives designed to address threats of nuclear terrorism. However, Russia's 2014 decision to establish a military presence on the Crimean peninsula of Ukraine, and to declare it independent of Ukraine

³ Conduct not alleged in an SOR may be considered for the following limited purposes: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; and/or (e) to provide evidence for whole person analysis under Directive Section 6.3. *Id.*; ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003).

and part of the Russian Federation, has again increased tensions between the United States and Russia.

Russian intelligence services target U.S. personnel with access to sensitive computer network information. According to the Director of National Intelligence, as of 2014, Russia is one of the leading intelligence threats to U.S. interests. It pursues information on advanced weapon systems, as well as proprietary information from U.S. companies and research institutions involved with defense, energy, and dual-use technology. In addition, Russia supports countries of security concern to the United States, by providing military and missile technologies to China, Iran, Syria, and Venezuela.

Russia's internal problems include a poor human rights record. The U.S. State Department's 2013 human rights report indicated that Russian security forces throughout the country committed human rights abuses. The government continued its crackdown on dissent that began after Vladimir Putin's return to the presidency. Human rights abuses include: credible reports of torture and excessive force by law enforcement officials with inadequate prosecution, resulting in a climate of impunity; life-threatening prison conditions; interference in the judiciary and the right to a fair trial; restrictions on religious freedom of minorities; widespread corruption; violence against women and limits on their rights in certain regions; and trafficking in persons.

Although Russian law prohibits government officials from entering private homes except as allowed by law or judicial decision, the State Department reported allegations that officials engaged in electronic surveillance without authorization and entered homes without warrants. Russian law enforcement agencies have legal access to electronic communications, and the internet activity of private individuals. Police can legally monitor telephone calls in real time.

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole-person" concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines B and C.

⁴ Directive. 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case.

Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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.

Under AG ¶ 7 of Guideline B, I have considered all the disqualifying conditions, especially the following:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(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.

Family ties to residents or citizens of a foreign country do not *per se* disqualify an applicant from obtaining a security clearance; such ties are only disqualifying if they raise security concerns by creating a heightened risk of foreign exploitation or a potential conflict of interest. The country in question also must be considered.⁸ Specifically, the nature of a country's government and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to coercion based on threats or pressure.

Russia has a poor human rights record including, *inter alia*, abuses committed by security forces, crackdowns on dissent, inadequate prosecution of law enforcement's use of excessive force, restrictions on religious freedom of minorities, violence against women, and trafficking in persons. Russia has been deemed one of the leading intelligence threats to U.S. interests based on its pursuit of information on advanced weapon systems, as well as proprietary information from U.S. companies and research institutions involved with defense, energy, and dual-use technology. Moreover, Russian law enforcement agencies can legally access the electronic communications, internet activity, and telephone calls of private individuals, which are the means Applicant uses to keep in touch with his foreign relatives. The Appeal Board has held that a foreign government's monitoring of private communications is relevant in evaluating the security significance of an applicant's relatives who live in that country.⁹ Applicant's close relationship with his foreign family members, and his ongoing contacts with his family in Russia, constitute a heightened risk of foreign coercion, and could create a potential conflict of interest. AG ¶¶ 7(a) and (b) apply.

Applicant and his parents co-own the apartment in Russia where his parents live. It is valued at \$100,000. He also owns a summer home, valued at \$10,000. These two assets represent substantial foreign financial interests, which could subject Applicant to foreign influence or coercion. AG ¶ 7(e) applies.

⁸ See ISCR Case No. 04-07766 at 3 (App. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

⁹ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

I have considered the following mitigating conditions under AG ¶ 8:

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

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has contacts with his parents and sister, who are citizen-residents of Russia. His ties of affection are evident in his calls and/or emails to them, as well as his trips to Russia to visit them. Ties to immediate family members are presumed to be close, and his frequent contacts demonstrate that they are close in this case. Moreover, his weekly contacts cannot be considered infrequent. In addition, Applicant has provided regular financial assistance to his family in Russia. He has sent funds to his mother and father totaling approximately \$15,000. His conduct shows that he has ties of obligation to his foreign family. Given these close ties, and the country in which Applicant's family resides, he could be placed in a position of having to choose between his family in Russia and his U.S. interests. AG ¶¶ 8(a) and (c) do not apply.

The file contains scant specific information about Applicant's ties in the United States, other than his residence and employment. His wife and daughter both maintain their Russian citizenship, as does Applicant. He has relationships with foreign family members who reside in a country with a poor human rights record, where abuses are committed by security forces, and private communications are monitored. Applicant has not carried his burden to show that a conflict of interest between his Russian and U.S. ties would be resolved in favor of the United States. AG ¶ 8(b) does not apply. In addition, Applicant has not shown that his financial interests in Russia, worth approximately \$110,000, are so insignificant that he could not be subject to pressure or influence based on these assets. AG ¶ 8(f) does not apply.

Guideline C, Foreign Preference

The security concern involving foreign preference arises

[W]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9)

Under AG ¶ 10, the following disqualifying condition is relevant:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport. . .

Applicant is a dual citizen of Russia and the United States. Dual citizenship, in and of itself, is not disqualifying;¹⁰ nor is Applicant's acquisition of a Russian passport in 2009, before he became a U.S. citizen. However, if an applicant exercises his foreign citizenship after becoming a U.S. citizen, that conduct is disqualifying. Applicant has continued to exercise the rights of a Russian citizen by possessing a valid foreign passport, and by using that passport to travel to Russia, after becoming a U.S. citizen in 2010. AG ¶ 10(a)(1) applies.

I considered the following relevant mitigating conditions under AG ¶ 11:

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a United States citizen or when the individual was a minor; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant has traveled to Russia three times since becoming a U.S. citizen, using his foreign passport to enter and/or exit. His use of a foreign passport constitutes an exercise of foreign citizenship. Applicant stated he keeps his Russian passport solely "for family purposes." The DOHA Appeal Board has held that, "The negative security significance of acts indicative of a foreign preference is not negated or diminished merely because an applicant engages in those acts for personal reasons or for personal convenience."¹¹ AG ¶ 11(c) cannot be applied.

The file contains no evidence that Applicant surrendered his Russian passport to a cognizant security authority, or invalidated it. AG ¶ 11(e) does not apply.

¹⁰ ISCR Case No. 99-0454 at 5 (App. Bd. Oct 17, 2000).

¹¹ ISCR Case No. 99-0424 at 13 (App. Bd. Feb. 8, 2001)

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the facts and the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."¹² Positive factors weighing in Applicant's favor include his 19 years of U.S. residence; his four years of U.S. citizenship; and his support of the United States through his work for more than a decade with a U.S. defense contractor.

However, the negative factors are more substantial. Applicant's ties to his family members who are citizens and residents of Russia raise security concerns. He maintains weekly telephone and electronic communications with his mother, father, and sister, who live in a country subject to monitoring of communications by authorities. He has provided regular financial contributions to his parents in Russia totaling \$15,000, showing his ties of obligation to his foreign family. Applicant has not met his burden to show that his family living in Russia does not constitute a risk. In addition, Applicant holds a valid foreign passport. He has used it to enter and exit Russia three times since he became a U.S. citizen. There is no record evidence he has taken steps to mitigate this concern. Applicant has not mitigated the security concerns under Guidelines B and C.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised. Such doubts must be resolved in favor of the Government.

¹² See Exec. Or. 10865 §7.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline B	AGAINST APPLICANT
Subparagraphs 1.a – 1.d	Against Applicant
Paragraph 2, Guideline C	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge