



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



In the matter of:)
)
) ISCR Case No. 14-02428
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: Nicole A. Smith, Esq.

06/12/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, coercion, and an unacceptable security risk. Considering Russia’s government, its relationship with the United States, and its ongoing pervasive espionage practices against the United States, Applicant’s mitigating information is insufficient to fully overcome the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 8, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline C (foreign preference).¹ Applicant answered the SOR on November 3, 2014, and elected to have her case decided on the written record. Department Counsel was assigned the

¹ The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

case on December 1, 2014, and requested a hearing before an administrative judge on December 3, 2014. Applicant's attorney entered her appearance on January 22, 2015, and requested a hearing in Arlington, Virginia. The case was assigned to me on January 29, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 30, 2015, scheduling a hearing for February 27, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on March 10, 2015.

Procedural and Evidentiary Rulings

At the hearing, the Government moved to withdraw SOR ¶ 2.b. There were no objections and the motion was granted. (Tr. 8)

Applicant testified, presented one witness, and offered exhibits A through M. The Government offered exhibits (GE) 1 through 4. GE 1 and 2, and AE A through L were admitted without objections. GE 3 and 4, and AE M are requests for me to take administrative notice of facts concerning the government of Russia. GE 3 and 4, and AE M, were marked and attached to the record, but not admitted into evidence. Neither side objected, and I took administrative notice of facts concerning the government of Russia outlined in both parties' requests.

Findings of Fact

Applicant admitted the factual allegation in SOR ¶¶ 1.a - 1.c. She denied SOR ¶ 2.a. Her admissions are incorporated as findings of fact. After a complete and thorough review of the evidence of record, and having observed Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 40-year-old web designer employed by a government contractor. She was born, raised, and educated in the Russian Federation (Russia) to Russian parents. Applicant's twin sister, father, and grandmother are citizens and residents of Russia. She completed high school in a school located at the Russian embassy in a Middle-East country. Her father was working in that country as an engineer with a Russian agency. She attended college, received a master's degree, and attended a doctoral degree program in Russian universities.

Applicant's father is 63 years old. He used to work as a telecommunications engineer for a Russian agency. Applicant claimed to have no knowledge as to whether her father served in the Russian military or worked for the Russian government. Applicant believes he now works for a small Russian publishing agency. Applicant claimed that her relationship with her father is estranged. She last had in-person contact with him in 2006. Apparently, he was not supportive of her mother when she was sick.

Applicant has a close relationship with her twin sister. They communicate on a weekly basis over the phone or emails. Her sister received a master's degree from a U.S. university. She travels to the United States on a yearly basis and stays with Applicant whenever she visits. According to Applicant, her sister wants to immigrate to

the United States, and has an approved immigrant visa waiting to be issued. Her sister works as a research analyst for a Russian industry. Applicant's last in-person contact with her sister was in 2013. Applicant testified that her sister never served in the Russian military or worked for the Russian government, and that she does not support the Russian political system or its government's policies.

Applicant's grandmother is 90 years old. She is a retired school teacher and receives a pension from the Russian government. Applicant has contact with her grandmother one of twice a month. Applicant visits her grandmother in Russia on an almost yearly basis.

Between 1994 and 1999, Applicant worked for an agency of the United States with offices in Russia. She met her U.S.-born husband while working for the agency in 1996, and they were married in the United States in 1997. Applicant's husband served five years in the U.S. Navy. After his discharge in 1986, he worked for government contractors supporting U.S. interests in Russia. After their marriage, they returned to Russia and lived and worked there until 2003. Applicant stopped working for the agency in 1999, and started working for a Russian market research company. Applicant has a U.S.-born six-year-old daughter and a 32-year-old stepdaughter. While in Russia, Applicant maintained close contact with her Russian relatives. She also maintained contact with some of her Russian friends. Applicant claimed she last voted in Russia in 1996.

Applicant became a naturalized U.S. citizen and received a U.S. passport in 2006, which will not expire until 2016. She stated in her 2013 SCA that she was a dual citizen of the United States and Russia. Applicant renewed her Russian passport at the Russian embassy in the United States in 2010. She used her Russian passport to travel, in preference of her U.S. passport, because of convenience – it was easier than having to obtain a visa. She used her Russian passport to travel to Russia from 2006 through 2013, a Caribbean country in 2006-2007, and two different European countries in 2010 and 2013. In her 2013 SCA, Applicant expressed her willingness to renounce her Russian citizenship.

At her hearing, Applicant testified that she was forced to use her Russian passport because Russia does not allow Russian citizens to enter the country using another country's passport. Applicant renounced her Russian citizenship in 2014, and returned her Russian passport to the Russian embassy in the United States.

Applicant testified that all of her financial and property interests are in the United States, except for a one-quarter share on an apartment in Russia that she inherited when her mother passed away in 2005. She presented no evidence as to the value of the property. She denied owning any financial or property interests in Russia or in any other foreign country. Applicant and her spouse have substantial assets in the United States, which include a \$270,000 home (with a \$140,000 mortgage), a \$70,000 parcel of land, \$30,000 in savings, \$12,000 in a college education fund for her daughter, and her 401(k) retirement account.

Applicant considers the United States her home and she intends to retire here. She believes that she has stronger ties with the United States than with Russia. She averred that she would do nothing to compromise her and her daughter's life in the United States. Applicant testified that she is engaged in activities with her community. She attends church regularly, participates in her daughter's school activities, and volunteers her services at an orphanage. She averred that she is not teaching her daughter to speak Russian. Applicant believes that she is not a security risk because she has limited contact with her father, her grandmother is old, and her sister has an approved visa to immigrate to the United States.

Applicant submitted several reference statements. She is considered to be a highly professional and trustworthy employee who is responsible, creative, and knowledgeable. Her references lauded her work ethic and her commitment and loyalty to the United States.

Russia has a highly centralized, weak multi-party political system dominated by the president. Russia has significant human rights problems, marked by restrictions on civil liberties, discrimination, denial of due process, forced confessions, torture, other prisoner mistreatment, and the government's failure to prosecute officials who commit serious violations. Government officials also engage in electronic surveillance without proper authorization.

Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advance weapons technologies beneficial to Russia's military modernization and economic development. Russia is one of the most capable and persistent intelligence threats and aggressive practitioner of economic espionage against the United States. Russia's intelligence services as well as private companies and other entities frequently seek to exploit Russian citizens or persons with family ties to Russia who can use their insider access to corporate networks to steal secrets. They also have offered financial inducements to U.S. government officials and citizens to encourage them to compromise classified information. Russia's attempts to collect U.S. technological and economic information represent a growing and persistent threat to U.S. security.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to

classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

The guideline indicates conditions that could raise a security concern and may be disqualifying AG ¶ 7 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

Applicant's father, sister, and grandmother are citizens and residents of Russia. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone may be sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²

Applicant has frequent contacts and a close relationship of affection and obligation with her father, sister, and grandmother. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Russian agents or individuals operating in Russia may exploit the opportunity to obtain sensitive or classified information about the United States. Applicant's relatives in Russia create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly or through her family members in Russia. (See, Administrative Notice Support Documents)

The Government produced substantial evidence raising potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

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

(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;

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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;

(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; 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 was born, raised, and educated in Russia. She left Russia in 1997 to marry in the United States, but returned to live in Russia until 2003. She has lived in the United States for close to 12 years, and became a naturalized U.S. citizen in 2006. She has been working for a government contractor since 2013. Applicant has strong affection and sense of obligation to her spouse and her U.S.-born daughter, both of whom are living in the United States. She and her spouse have substantial financial and property interests in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her family members living in Russia. Although there is no evidence that Russian government agents, or other entities, have approached or threatened Applicant or her family living in Russia, she is nevertheless potentially vulnerable to threats, coercion, inducement, and manipulation made against her or her family members living in Russia.

Considering Russia's government, its relationship with the United States, and its ongoing pervasive espionage practices against the United States, Applicant is not able to fully meet her burden of showing there is "little likelihood that [her relationships with her relatives, friends, and associates who are Russian citizens and living in Russia] could create a risk for foreign influence or exploitation." AG ¶¶ 8(d) and (e) have limited applicability and do not mitigate the foreign influence concerns.

Applicant professed that her loyalty and sense of obligation is to her spouse, her daughter, and to the United States. She averred that she has no loyalty to Russia, and her sense of obligation to her relatives in Russia (in particular her father) is minimal compared to her sense of loyalty and obligation to her immediate family. She noted that she has lived 12 years in the United States and all of her financial and property interests are in the United States.

Notwithstanding, the risk of coercion, persuasion, or duress are significantly greater because of Russia's form of government. It is not clear whether her father (or

other relatives in Russia) had jobs related to the government, and although her grandmother is elderly and retired, she still depends on the Russian government for her pension. I note that Applicant denied having knowledge of whether her father or other extended family members in Russia served in the Russian military or were associated with the Russian government.

Guideline C, Foreign Preference

AG ¶ 9 explains the concerns about foreign preference stating:

When 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 ¶ 10 indicates four conditions that could raise security concerns and may be disqualifying in this case:

(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;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) residence in a foreign country to meet citizenship requirements;

(5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country;

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant entered the United States in 1997 to get married. She returned to Russia with her U.S. spouse who worked there for a U.S. agency. She lived and worked in Russia until 2003, when they returned to the United States. She became a naturalized U.S. citizen in 2006. After becoming a U.S. citizen, Applicant continued to use and renewed her Russian passport at a Russian embassy in the United States in 2010, for her travel convenience. She used her Russian passport, in preference of her U.S. passport, to travel to Russia in 2006 through 2013, a Caribbean country in 2006-2007, and two different European countries in 2010 and 2013. Applicant renounced her Russian citizenship in 2014, and returned her Russian passport to a Russian embassy in the United States.

Applicant owns a one-quarter share on an apartment in Russia that she inherited when her mother passed away in 2005. She presented no evidence as to the value of the property.

Foreign preference disqualifying condition AG ¶ 10(a) is supported by the evidence. If this condition is not mitigated it would disqualify Applicant from eligibility to hold a public trust position.

AG ¶ 11 provides conditions that could mitigate the security concerns for foreign preference:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

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

(f) the vote in a foreign election was encouraged by the United States Government.

AG ¶¶ 11 (b) and (e) are applicable. Applicant exercised her Russian citizenship after becoming a naturalized U.S. citizen in 2006. She renewed her passport in 2010,

and used it in preference of her U.S. passport, and she received privileges and benefits reserved for Russian citizens. Notwithstanding, Applicant surrendered her Russian passport and renounced her Russian citizenship in 2014. She mitigated the security concerns alleged under Guideline C.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines B and C in my whole-person analysis. I considered that Applicant has lived in the United States 12 years. She has worked for a government contractor since 2013, and became a naturalized U.S. citizen in 2006. Applicant has strong affection and a sense of obligation to her spouse and her U.S.-born daughter, both of whom are living in the United States. She and her spouse have substantial financial and property interests in the United States.

Notwithstanding, Applicant's foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and an unacceptable security risk. Considering Russia's government, its relationship with the United States, and its ongoing pervasive espionage practices against the United States, Applicant's mitigating information taken together is insufficient to fully overcome the foreign influence security concerns under Guideline B.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried her burden of persuasion and the foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraphs 1.a- 1.c:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Withdrawn

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge