DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. His connection to Russia based primarily on his marriage to a dual-citizen of the United States and Russia does not present an unacceptable risk of foreign influence. But he did not present sufficient evidence to show that he has made a reasonable effort to pay, settle, dispute, or otherwise resolve a child-support arrearage of approximately $145,000, which is a security concern. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on April 17, 2013.[1] Thereafter, on December 4, 2014, after reviewing the application and information gathered during a background investigation,

[1] Exhibit 1 (this document is commonly known as a security clearance application).

the Department of Defense (DOD)[2] sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.[3] The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline F for financial considerations and Guideline B for foreign influence. He answered the SOR on December 24, 2014, and requested a hearing.

The case was assigned to me on December 1, 2015. The hearing was held as scheduled on January 11, 2016. The transcript of the hearing (Tr.) was received on January 19, 2016.

The record was kept open to allow Applicant to submit additional documentation. He made a timely post-hearing submission, and those three matters are admitted without objections as Exhibits F, G, and H.

Ruling on Procedure

Without objections, I granted Department Counsel's written request to take administrative notice of certain facts about the country of Russia.[4] Although the request is extensive, I take particular notice of the following facts: (1) Russia is one of the leading state intelligence threats to U.S. interests based on their capabilities, intent, and broad operational scope; (2) Russia has extensive and sophisticated intelligence operations, which they use to target U.S. and allied personnel with access to sensitive computer-network information; (3) Russia has a poor record of human rights; and (4) the United States along with other members of the international community do not recognize the purported annexation of the Crimean Peninsula in Ukraine and consider Russia's action to be illegal.

Findings of Fact

Applicant is a 45-year-old senior Linux administrator. His education includes a high school diploma. He married for the first time in 1990 and divorced in 2001. He married for the second time a few months later in 2001. He has two children from his first marriage, ages 24 and 16. He has a five-year-old child from his current marriage.

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[2] The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

[3] This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006).

[4] Tr. 26–29; Exhibit 5.

Applicant has worked for his current employer since 2013.[5] Before that, he worked for a number of companies in various information technology (IT) jobs and he also had self-employment as an IT consultant. His employment history also includes active duty military service during 1989 to 2002 and reserve duty during 2002–2005.[6]

Applicant presented substantial evidence of a good employment record as well as his good character and suitability for a security clearance.[7] The 11 letters of recommendation attest to Applicant's work ethic, professionalism, and trustworthiness.

Under Guideline B for foreign influence, the SOR alleges that Applicant has family ties to Russia based on his spouse who is a citizen of Russia and her mother- and father-in-law who are citizens of and residents in Russia. Under Guideline F for financial considerations, the SOR alleges that Applicant has the following delinquent financial accounts: (1) a $144,879 collection account stemming from a child-support arrearage; and (2) an $85 collection account with a communications company, which was paid and will not be discussed further herein.[8] Applicant disclosed his family ties to Russia and the child-support arrearage in his 2013 security clearance application; he provided additional information about both matters during his background investigation; and the child-support arrearage is established by credit reports from 2013 and 2014.[9]

Applicant met and married his current wife in 2001, when he was on active duty military service in State #1. His military duties at the time required him to have a high-level security clearance, and he was required to report to military officials before and after any travel to Russia.[10] His wife was born and raised in Russia. She has a degree in music from a Russian university, and she has a degree in economics from a U.S. university in State #1. She became a naturalized U.S. citizen in 2005. She is a dual citizen of the United States and Russia.[11] Although married in Russia, Applicant and his wife have lived and worked in United States throughout their marriage.

In addition, Applicant has in-laws who are citizens of and residents in Russia. His mother-in-law is a nurse in a hospital. Due to a language barrier, Applicant has had limited communication with his mother-in-law, although his wife speaks to her mother via Skype or telephone on a regular basis. His wife's natural father, the person Applicant listed in his security clearance application, has not been involved with the

[5] Exhibit 1.

[6] Tr. 74–75.

[7] Exhibits E.

[8] Tr. 40–43; Exhibit D at page 10.

[9] Exhibits 1, 2, 3, and 4.

[10] Tr. 75–76.

[11] Exhibit 2.

family for years. Applicant stated that his mother-in-law divorced her daughter's father because he was an alcoholic.[12] His mother-in-law may have remarried.[13] Applicant has met that person, although his mother-in-law no longer lives with him because he was abusive. In any event, Applicant's wife has not had a close relationship with her father or stepfather.[14]

Although Applicant traveled to Russia in 2001 (for his marriage), 2003, and 2004, he has no desire or intention to go there anymore.[15] He refuses to go there because he is strongly opposed to Russia's leadership and its government. He also expressed disappointment in the Russian people who continue to support Russia's leadership. He further denied any close ties to the country of Russia.

Applicant's child-support arrearage, which he described as a "complicated matter," stems from his 2001 divorce from his first wife.[16] The divorce occurred in State #1. Applicant and his then wife agreed that he would pay $600 monthly for his then two minor children. About a year or so later in 2002, his ex-wife, now living in State #2, brought an action to modify and increase the child-support payment to $1,500 or $1,690 monthly, although ultimately the state court in State #2 ordered that the child-support payment be modified to $1,000 monthly.

That order remained in place until 2008 when his ex-wife sought to modify and increase the child-support payment with the same state court in State #2. Applicant was now living in State #3, which is his state of current residence. He did not retain an attorney to represent him, but he did respond in writing to a request for information in January 2008. According to Applicant, he heard nothing further about the matter until sometime in June 2008, when he received a postcard from the state court notifying him that a judgment had been entered in the case. The judgment increased the child-support payment to more than $2,500 monthly and established an arrearage of about $7,000.

A few months later in October 2008, Applicant sent a letter addressed to the clerk of court for the state court.[17] He complained about the unfairness of both the actions of his ex-wife and the state court, and he described the state court's actions as punitive and likely to bring financial ruin to his family. The central basis for his complaint was that

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[12] Tr. 57–59.

[13] Tr. 57–59. At the hearing, Applicant stated that his mother-in-law remarried. But during the background investigation, Applicant stated that his mother-in-law had not remarried. Exhibit 2 at 3.

[14] Tr. 58–59.

[15] Tr. 50–52.

[16] Tr. 43.

[17] Exhibit H.

the state court did not give him an opportunity to be heard. He did not receive a response to the letter or any of several letters sent to the state court.[18] He also sent letters to the child-support enforcement agencies in State #2 and State #3, and visited the child-support enforcement agency in State #3.[19] He sought a modification of the support order by submitting a uniform-support petition in 2011.[20] He stated that his 2011 petition was one of four or five attempts to obtain a modification of the support payment.[21] He was in contact with the child-support enforcement agency in State #3 in June 2014 to enlist their assistance in working with officials in State #2.[22] Those efforts were unsuccessful, but he was nonetheless advised to try to send additional payments due to the high balance.[23]

After the last modification in 2008, Applicant was never able to make the support payment in full, although he continued to pay $1,000 to $1,500 monthly. He also pointed out that he paid for college expenses for his oldest child,[24] and the support payment has remained the same despite that his oldest child is now 24 years old and married. He conceded that "over the last couple of years, [he's] given up" attempting to resolve the matter and does not foresee the indebtedness going away until there's a new judge for the state court in State #2.[25]

The April 2013 credit report described the child-support arrearage as a collection account with State #3 with a monthly payment of $2,652, a balance of $117,559, and a past-due amount of $65,000.[26] The June 2014 credit report described the account as child support with a monthly payment of $2,652, a balance of $147,531, and a past-due amount of $144,879.[27] In addition, Applicant submitted a January 2016 credit report that shows the following: (1) the $85 collection account was paid; (2) several accounts were 30 days past due but are now paid or current; (3) the remaining numerous accounts are in good standing; and (5) a credit score of 811, which is considered very good or

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[18] Tr. 45; Exhibit A.

[19] Exhibit A.

[20] Exhibit G.

[21] Tr. 46.

[22] Exhibit H.

[23] *Id*.

[24] Exhibit B.

[25] Tr. 48.

[26] Exhibit 3.

[27] Exhibit 4.

excellent.[28] The collection account for the child-support arrearage is not listed in the 2016 credit report.

Applicant stated that his gross income for 2015 was $125,000, and his wife is employed by a local university.[29] Those circumstances suggest he has sufficient income to retain an attorney in the child-support case. He gave two reasons for acting on his own without the assistance of legal counsel.[30] First, he explained at some length that he has declined to do so because he received advice during the 2001 divorce to resolve differences with his ex-wife without the expense of attorney's fees, and he has continued to follow that advice as a matter of principle. Second, he stated he was wary of the legal process.

Law and Policies

It is well-established law that no one has a right to a security clearance.[31] As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[32] Under *Egan,* Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.[33] An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.[34]

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[35] The Government has the burden of presenting

[28] Exhibits C and D.

[29] Tr. 69–70, 53.

[30] Tr. 76–81.

[31] *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

[32] 484 U.S. at 531.

[33] Directive, ¶ 3.2.

[34] Directive, ¶ 3.2.

[35] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.[36] An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.[37] In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[38]

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.[39] The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[40]

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.[41] Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

The gravamen of the SOR under Guideline B is whether Applicant's family ties, by his marriage, to Russia disqualify him from eligibility for access to classified information. Under Guideline B for foreign influence,[42] the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

> 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

[36] Directive, Enclosure 3, ¶ E3.1.14.

[37] Directive, Enclosure 3, ¶ E3.1.15.

[38] Directive, Enclosure 3, ¶ E3.1.15.

[39] *Egan*, 484 U.S. at 531.

[40] ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

[41] Executive Order 10865, § 7.

[42] AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

> 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.[43]

In addition, based on U.S. concerns about Russia as set forth in Department Counsel's request for administrative notice, Russia meets the heightened-risk standard as that term is used in Guideline B.

In analyzing the evidence of Applicant's family ties to Russia, I have considered the following disqualifying and mitigating conditions:

> AG ¶ 7(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;
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> AG ¶ 7(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;
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> 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 United States; and
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> AG ¶ 8(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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant's family ties to Russia, a country that presents real-world risks to U.S. interests, are sufficient to raise a security concern. Applicant is a native-born U.S. citizen who is married to a dual citizen of the United States and Russia. His marriage is longstanding and includes a native-born U.S. citizen child. Applicant has minimal contact with his Russian mother-in-law and essentially no contact with his Russian father-in-law or his wife's stepfather. Otherwise, all of Applicant's ties are exclusively to

[43] AG ¶ 6.

the United States. Those ties include his own family, his honorable service in the U.S. military for a number of years, his employment history, and his financial interests.

The security-clearance process is not a zero-risk program, because nearly every person presents some risk or concern. Many cases come down to balancing that risk or concern. Here, Applicant has family ties, by his marriage, to Russia. Those circumstances should not be dismissed or overlooked as fanciful or unrealistic, especially considering the matters the United States views of concern with Russia. Nonetheless, on balance, I am satisfied that his ties to the United States outweigh and overcome his ties to Russia, a country for which he has expressed disdain. This is clearly not a case of "divided loyalties" with an applicant who has one foot in each country. Viewing the record evidence as a whole, I am confident that Applicant can be expected to resolve any potential concern or potential conflict of interest in favor of the U.S. interest.

Under Guideline F for financial considerations,[44] the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.[45] The overall concern is:

> Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.[46]

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties as well as inability or unwillingness to satisfy debts.[47] That conclusion is supported by the $145,000 collection account with State #3 stemming

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[44] AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

[45] ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and *see* ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

[46] AG ¶ 18.

[47] AG ¶¶ 19(a) and (c).

from the child-support arrearage. That's a large sum of money. Further, I consider child support a high-priority debt given the nature of the obligation. At bottom, the unresolved $145,000 collection account raises a serious security concern under Guideline F.

In mitigation, I have considered the six mitigating conditions under Guideline F,[48] and none, individually or taken together, are sufficient to explain and mitigate the security concern. First, Applicant's financial problem is not safely in the past and unlikely to recur, because the collection account is an ongoing problem.

Second, the collection account is not a circumstance largely beyond Applicant's control and he has not acted responsibly under the circumstances. While I understand he was not living in State #2 and lived some distance away, he could have traveled to State #2 in an effort to modify the support payment and reduce the arrearage, or he could have hired an attorney in State #2 to represent him in the case. Granted, he did not completely ignore the problem; he wrote letters of complaint that were unlikely to find a sympathetic ear. But he did not take commonsense steps to address the problem through the judicial system in State #2.

Third, there are not clear indications that the child-support arrearage is being resolved or is under control. The evidence suggests just the opposite.

Fourth, considering that the support order was last modified about eight years ago in 2008, he has not made a reasonable effort to pay, settle, dispute, or otherwise resolve the child-support arrearage. Likewise, he has not made the full monthly support payment for the last several years. He elected not to obtain the services of an attorney, which of course can be costly. Instead, he continued to follow advice he received during his 2001 divorce—despite the change in circumstances years later—to his detriment.

Fifth, he might have a reasonable basis to dispute the amount of the arrearage, but he has not done enough to help himself. He asserts he was the victim of a default judgment in 2008 when the support order was last modified. If that is the case, he has not taken the necessary steps to challenge the state court's judgment, modify the support order, or reduce the amount of the arrearage. Moreover, he concedes that he essentially gave up trying to fix the problem during the last few years. He presented no documentation of child-support payments he states he has made over the years. He presented no court records from the state court in State #2. Given these circumstances, the amounts listed for the child-support arrearage in the 2013 and 2014 credit reports are presumed to be valid and are accepted as true for the purpose of this proceeding.

Applicant's ongoing and unresolved child-support arrearage of about $145,000 creates doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or

[48] AG ¶ 20(a)–(f).

vice versa. I also gave due consideration to the whole-person concept.[49] Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 2.a–2.c:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge

[49] AG ¶ 2(a)(1)–(9).