

DATE: February 28, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0633

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

William S. Fields, Esquire, Deputy Chief Department Counsel

**FOR APPLICANT**

Pamela B. Stuart, Esquire

**SYNOPSIS**

Applicant was subject to foreign influence where he had professional associates known be affiliated with foreign governments, where he had engaged in conduct that increased his exposure to potential exploitation and where there were indications that foreign nationals had acted to increase his vulnerability to exploitation. His "black market" purchases, illegal currency exchanges, and inability to resolve counter-intelligence issues raised by his past conduct case doubt on his fitness for access to classified information. Clearance denied.

**STATEMENT OF THE CASE**

On 15 February 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 28 arch 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 10 July 2002, and I received the case the same day. I issued a notice of hearing on 24 September 2002 for a hearing on 30 October 2002.

At the hearing, the Government presented twelve exhibits--admitted without objection--and no witnesses; Applicant presented twelve exhibits-- ten admitted without objection, two excluded by me as duplicative--and the testimony of six witnesses, including himself. DOHA received the transcript on 7 November 2002.

**FINDINGS OF FACT**

Applicant formally denied the allegations of subparagraphs 1. b., c., j., k., l., m., n., o., q., r., and 2.a.<sup>(2)</sup> He admitted the remaining allegations of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--a 45-year old employee of a defense contractor--seeks renewed access to classified information. He held a security clearance, both inside and outside federal service, continuously between approximately 1980 and March 1997,

when the Department of Defense suspended his clearance. He left government service in March 1998 and went to work for his current employer.<sup>(3)</sup> His professional areas of expertise are artificial intelligence and target recognition.

On 2 March 1999, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1) on which he truthfully disclosed his personal and professional foreign contacts, foreign birth of his spouse and in-laws, personal and professional foreign travel, and suspension of his clearance in March 1997.

On 4 February 2000, he provided a sworn statement to the Defense Security Service (DSS)(G.E. 2) explaining his foreign influence issues and clearance suspension (Emphasis added):

At my request, Special Agent [named] has prepared this statement for me. **I have completely read this statement, understand it, and agree with its contents.**

Family. I met my wife, [named] in Oct 92, while attending a scientific conference in Russia.**[she] was born in Russia (4) and was formerly a member of Young Pioneers and a Commosolot.**<sup>(5)</sup> To my knowledge, [she] has never been a member of the communist party nor a member of a foreign intelligence service. While at the conference I asked to meet some of the young people to seek candidates for a student exchange program at [university, city, state]. **[My wife] was working for [named engineering and physics institute], which is at the location of the Russian nuclear reactor and is government run. I believe [she] probably held a Russian security clearance of some sort because of the reactor location.**<sup>(6)</sup> [My wife] and I developed a relationship and in ay 93, she came to the U.S. [she] became a [university] visiting scholar. I never discussed my working with the U.S. government with [her]. [She] never asked me to provide her with any technical information. In Oct 94, [my wife] and I were married. [She] continued to travel outside the U.S. with me to attend baseball games. Until [she] became a U.S. citizen, I would have to get either the host baseball team, an organization or the travel agency to write a letter sponsoring [her] into their country. **Several times while at baseball games overseas, [her] friend, [named] met [my wife] and I, at our expense. [Her friend] came to Copenhagen while we were there in Jul 98 and Kiev in Jul 97. When I went to China between Jun and Jul 99, [she] came to the U.S. to stay with [my wife] and help with our children while I was gone. [She] also came to the U.S. for our wedding and once in 1996 to visit.**<sup>(7)</sup>

**In Mar 97, my Personnel Security Clearance was suspended by Washington Headquarters Service due to security issues developed during my background investigation. I have not had access to any classified information since Mar 97.**<sup>(8)</sup> In 1996, I took between two to four polygraphs conducted by Defense Security Service which reportedly showed deception on questions posed regarding the unauthorized disclosure of classified information. Between Apr 97 and Oct 97, another government agency conducted an investigation on me. I took several other polygraphs on questions posed regarding the receipt of anything of value from foreign nationals, and was told I showed deception on these polygraphs as well. I told [my wife] about the outcomes of these polygraphs. However she never asked what questions were posed to me and I never told her the specific information. I explained to [her] I had no idea why I didn't pass the polygraphs. I don't know what would happen if I ever told [her] about my work for the federal government.

[My wife] became a U.S.[sic] in Jan 98.<sup>(9)</sup> From Jan 99 to present, [she] has been working for [the same company I work for] as a computer software engineer. [She] does not have access to classified information and does not hold a security clearance. **Every Saturday, [She] goes to the Russian Club, [city, state] where members get together to do Russian cultural things, for example reading poems and singing songs. [She] usually takes our daughter along, who is conversant in both languages and I have also been occasionally. We once hosted the group at our home.**<sup>(10)</sup>

On 25 Jan 00, [My wife's] parents were at the embassy in Warsaw, Poland being interviewed for a permanent visa to come to the U.S. They have now been approved to immigrate and will come to the US the end of March or beginning of April. [My wife] is officially sponsoring them and I plan to pay for their trip to the U.S. We plan to have [her] parents reside with us.<sup>(11)</sup> **My in-laws want to leave their homeland due to the harsh environment and they will be a help in caring for our children.**<sup>(12)</sup> As previously identified in prior sworn statements, [her] mother was once a

<sup>(13)</sup>

**member of the communist party.** However [her] mother has since commented to me that after seeing America, she is embarrassed by her former ideals. When my in-laws were in the U.S., I would give them between \$500.00 to \$1,000.00 and would send them Christmas presents. However we never financially supported them. [My wife] typically corresponds with her parents over the telephone once every other week and approximately monthly with her brother.

**[She] has aunts and uncles who currently reside in Ukraine.** (14) However I have only met them once and [my wife] does not have contact with them. To the best of my knowledge, none of [my wife's] relatives, including her immediate family, work for any foreign government. Neither [my wife] nor I own any property outside the U.S. I had some shares of Nestles Co., a Swiss owned company, valued at several hundred dollars. However I recently sold this stock as I did not want to cause any conflict in the determination of my being granted a security clearance. I do not own any stocks, bonds, nor have any bank accounts outside the U.S. My in-laws have never asked me to provide them with any classified information and I have never been threatened to provide anyone with sensitive information.

**Baseball. During my trips to Russia in Oct 92 and Apr 93, I was asked to develop a baseball team to play against the [named team]. I originally named my U.S. team [named team], but I have since named this team the [new name]. The team originally played only Russian teams. However the concept of the team has grown to include international competition in various other countries.** (15) I have obtained a business license and also incorporated the team. I organize all the baseball games by contacting a team manager in another country and setting up a specific number of games. I will then contact a travel agency in the host country to arrange travel, lodging and sightseeing trips. After getting a complete package price for the entire team, I will amortize the price among the players, including the travel expenses for myself. In this way, my expenses are included in the price paid my [sic] the team members. After arranging the trip, I will then send out announcements to all the baseball contacts I have made over the years and anyone interested in playing will be placed on the team. In this way, each trip is comprised of different team members. I also maintain a website for the team [www.\[newnamedteam\]baseball.com](http://www.[newnamedteam]baseball.com). (16)

Since Sep 96, I have traveled to the following countries with [new named team]: From 23 Jul 97 to 8 Aug 97, we went to Netherlands and Ukraine. [My wife] and my daughter came with me. During this trip, the team and I stayed in a hotel in Amsterdam for three days and the baseball games were played in Haarlem. We then went to Kiev, where we played a few games and then took a bus to Kirovograd to play against the Ukraine National Team. [Named foreign contact] and [my wife's] brother and parents came to see us during this trip. [My wife's] friend [named] also came to visit us while in Kiev.

From 22 Jul 98 to 3 Aug 98, [the new named team] played baseball in Copenhagen, Denmark. [My wife] and our daughter also went on this trip, while there, [my wife's friend] came to visit [her] and to help with our children. While playing several games in Copenhagen, the team then took a one day boat to Malmo, Sweden for sightseeing.

From 24 Jul 99 to 4 Jul 99, [the new named team] played a team in Beijing, China. [My wife] stayed in the U.S. and [her friend] visited [her] at our home in [city, state] while I was in China to again help with our children. I am also planning another baseball trip to China from June and July 2003 and am still in the process of forming the team. To date, I plan to be in Beijing and Shanghai from 19 Jun 00 to 1 Jul 00 and then Switzerland to play baseball from 3 Aug 00 to 14 Aug 00. (17)

On 27 Apr 99, I also flew to Montreal, Canada for three days to attend a conference with the Competitive Intelligence Society. I went alone on this trip.

I have never visited any embassies or consulates while outside the U.S. From Sep 96 to present, I have never had any incidents with law enforcement or custom authorities. From Sep 96 to present, I have not had any property confiscated while outside the U.S. I have not engaged in any behavior which could place me in a position to be compromised. I have not had my passport confiscated and it has never been lost. I do not usually leave my room key with the hotel desk. Neither myself nor my family members have ever been detained by officials of a foreign country. From Sep 96 to present, neither myself nor my family have been approached by a foreigner in an effort to cultivate a friendship when there was no apparent reason. I never had evidence that I was being monitored or under surveillance in any way. **I have occasionally purchased small items, between \$5.00 to \$20.00, from the flea market on [named] Street in Moscow. Although this flea market is out in the open it is considered a black market.** (18) The market sells a lot of military

merchandise and I purchased a KGB watch there. <sup>(19)</sup> I did not have any encounters with law enforcement due to purchasing these items. **Over the years, [my wife] has exchanged some of my American dollars into rubles through Russian college students who want U.S. dollars.** <sup>(20)</sup> Most of the exchanges were between \$20.00 to \$40.00, I have never illegally exchanged large amounts of money. <sup>(21)</sup> **In past years, it was difficult to find government currency exchange locations and therefore I had to exchange money through local Russians for convenience. One occasion, I was in the process of going into a currency exchange location in St. Petersburg and a Russian national outside the location offered to exchange my money at a higher rate. I exchanged the money and encountered no problem with law enforcement.** <sup>(22)</sup> In more recent years, the hotel information desk has exchanged my money. From Sep 96 to present, there have been no incidents of a security significance with regards to my foreign travel.

Foreign Connections. From Sep 96 to present, I have had contact with the following foreign nationals.

[named Russian scientist], Ph.D. (as identified in prior investigation), who is employed with [named center for scientific and technical information]. In a prior investigation I identified [this organization ] as being the major foreign sponsor for my trips to lecture and present papers in Russia. My former contact with the organization led me to believe that personnel of [this organization] may have connections to the Russian intelligence community. [This organization] seemed to have more funds for any normal ordinary Russian scientific activity and I once saw [another employee of this organization] with a two foot tray of \$100.00 bills in his desk drawer. ([He] is identified in a prior investigation). <sup>(23)</sup> I received an email from [the named scientist] one year ago stating he was in Pittsburgh. I did not return his correspondence. However I did check the email address [he] sent the message from and noted he is now affiliated with [prestigious U.S. research university]. I do not know his status in the U.S., but suspect he may be a visiting scholar with [that university]. I have occasionally received other emails from [him] over the years inviting me to various conferences. I have not responded to his requests . . .

. . . [named Russian scientist]. **[He] is a Russian national with whom I have frequent contact. [He] is employed with the Russian Academy of Science. I got [him] to act as a consultant for [my company] developing computer software. [He] writes software agent code for [my company] that migrates information from computer to computer. [He] is given a statement of work and all correspondence is preformed via the internet. [He] has no access to [company] information. . .** <sup>(24)</sup>

. . . I met [named Russian] in 1994 when my baseball team was playing against [his] Russian team. When one of my team members became injured, I asked [him] to take his place. [He] put me in contact with the Russian Federation of Baseball so I could set up routine baseball games in 1995. [He] is employed as a baseball manager for a local Russian high school, outside Moscow. As such, [He] probably only earns a small income. **In 1995, [he] told me he was planning to send his family to the U.S. sometime in the future and asked me to hold onto \$3,000.00 for him I felt hesitant about doing this, but felt obligated to help him. [He] gave me \$3,000.00 in \$20.00 U.S. dollar bills. I wondered how [he] was able to have this amount of money. However [he] runs international baseball tournaments and charges American rates for rent of baseball diamonds and fees for registration. Therefore it is not inconceivable for him to have this money. I put this money in a separate savings U.S. bank account for [him]. In 1996, [he] said he did not want the money yet. I recently heard [he] is in the U.S. visiting [named American, city, state]. [He] is a U.S. citizen who occasionally plays for [my team]. [The named Russian] is staying with [the American] while he is competing in the U.S. Due to my current personnel security investigation, I felt it was necessary to return the money to [the Russian. Therefore, I sent a check in the amount of \$3,300.00 (which includes interest) to [him] at [the American's] address.** <sup>(25)</sup> I never disclosed any classified or sensitive information to the Russian. I did not provide anything to [the Russian] in exchange for this money. Over the years, I have maintained a friendship with [him] mainly via email or fax and over the telephone while [he] is in the U.S.

I do not have any preference or sympathy with any foreign nationals or toward a foreign government. I am not dependant on any foreign activities for financial support nor am I dependent on any foreign activities to advance my professional career. The foreign connections that I currently maintain do not have any influence over my ability to defend the security interests of the U.S. I have never provided classified information to anyone who did not have a need to know. If my in-laws or any other individuals were ever held hostage in an attempt to gain information from me, I would not hesitate to report it. I have never had a foreign national threaten me. To the best of my knowledge, none of

my family nor in-laws have any academic interests outside the U.S. From Sep 96 to present, no foreign person or institution has ever solicited me for any written material.

While at [U.S. university research arm], it was common practice for numerous individuals to make requests of either my own published articles or that of others. I would usually receive postcards asking for a specific article, identified by an author and date, if the request came from within the U.S., the request for information was honored. Usually student assistants would be responsible for administering these types of requests. I have also sent technical papers to several Russian nationals, as previously reported in my prior investigation. These papers were all open source information. From Sep 96 to present. I have not given any technical information to any foreign national. As discussed in prior investigation, [different named Russian] did attempt to cultivate a friendship with me for no apparent reason. This was the only time I felt uncomfortable about a foreign national attempting to form a friendship with me. I have not received any correspondence from any foreign government or institution, except invitations I received to attend conferences from institutions which has been previously discussed. I do not recall having an accidental meeting with any foreigner who attempted to recontact me for any reason. From Sep 96 to present I have not received any offers of financial assistance from a foreign person, government or organization.

I have attended various conferences outside the U.S. over the years in which I have presented various technical information. To the best of my knowledge, all of this information was from open sources and I am not aware of any of the information being export controlled. Sometime in the mid 1980's I was asked to work as a consultant for a French military company. I do not recall the name of the company. I advised them I would have to get approval from [U.S. university research arm] security first and I never heard from the company again. This was discussed in a prior investigation. **Sometime in 1994, I was in Germany meeting with Daimler Benz representatives discussing Neural Networks. We talked about our research projects, including a general conversation about Target Recognition capability. Two years later, in approximately 1995, I was contacted by Daimler Benz regarding the target recognition program at DARPA. I did not respond to this request as I did not feel it was appropriate.** (26)

The only time I was invited to lecture in a foreign country, at the expense of that host, was to attend a conference in Australia. This information was covered in my prior investigation.

I have never had an acquaintance ask me to engage in any disloyal activity or to support any groups hostile to the U.S. I consider myself to be loyal to the U.S. and I fully support the Constitution. I have no hesitation about compiling [sic] with the policies of the Department of Defense. I have never been asked to work for, agreed to work for, nor volunteered to work for a non-U.S. intelligence or security service. I have never improperly handled sensitive or classified information. I have never worked for any foreign research institute or foreign entity. I have never been threatened nor coerced because of my relatives, friends or contacts living in a foreign country. If I ever was I would not hesitate to report the incident to the appropriate U.S. authority.

Applicant made similar statements during the background investigation that resulted in his security clearance being suspended in March 1997 (G.E. 3, 4, 5). In addition to the foreign relatives described above, Applicant has a brother-in-law who is a Russian citizen, residing in Russia; the brother-in-law was in the Russian army, but is now a driver for a restaurant (G.E. 3, 5). In approximately 1995, Applicant told his wife--who was still a foreign citizen--that he had a U.S. Government-issued security clearance, and was working on target recognition projects for the Defense Department (G.E. 5). Until June 2001, when she began the process of trying to surrender her Russian passport and to surrender her Ukrainian citizenship, Applicant's wife possessed a Russian passport that had been extended in approximately 1998 to an expiration date of April 2003 (A.E. D). The passport was extended because of a planned trip outside the U.S. when she was still a citizen only of Russia.

The seeds of Applicant's clearance difficulties began in September 1992, when he was finally divorced from his first wife of 12 years. He traveled to Russia in October 1992 for a government-sponsored scientific conference. At the time, he was employed by the research arm (essentially U.S. government-funded) of a major university. He met his wife at the conference in October 1992. She was a post-graduate student at the conference-sponsoring site, which was part of a Russian nuclear complex. She received housing and a stipend. Although perhaps not employed by the facility in a traditional sense, I conclude that she was employed by the government and probably had access to sensitive, if not classified information.

Although Applicant's prior statements describe his seeking to meet with the younger conference attendees to explore their interest in a visiting scholar position at his university, the fact remains that the discussions quickly devolved to discussions only with Applicant's wife, and when he went back to Russia in spring 1993, he became romantically involved with her. When she came to the U.S. in summer 1993 as a visiting scholar, she resided with Applicant. She began traveling with him or meeting with him when he traveled to Europe for other conferences. By October 1994, they were married. She emigrated to the U.S. and became a U.S. citizen in January 1999. Her parents followed in March or April 2000, and intend to become U.S. citizens when they are eligible. Applicant and his wife have two children, both U.S. born, both with Russian names. They are expecting a third child.

Applicant's baseball venture, although composed of players on an ad hoc basis and incorporating elements of fantasy-baseball-cum-tourist-adventure, is nevertheless an apparently well-run operation that at a minimum covers his personal expenses for going on the trips.

Applicant's case at the hearing consisted largely of his trying to repudiate significant portions of his earlier statements to DSS: the baseball venture is now just a fun thing for die-hard (and ageing) players, the currency transactions are minimized, the "black market" is now just a flea market (perfectly legal). He testified that it was his practice to report contact with foreigners to his employers, but there is no evidence in the record to indicate he reported incidents which might have been foreign solicitations until he began being questioned by DSS in 1996.

Applicant's character witnesses (A.E. E, F, G, H, I, J, K) consider him an honest and trustworthy employee, friend, and tour operator. None are aware of the specifics of the SOR. The same is true of his live witnesses, who include his current supervisor (who also supervised him when he worked for the Defense Department) as well as a former student assistant and participants on his baseball tours.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FOREIGN INFLUENCE (CRITERION B)**

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;

E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;

E2.A2.1.2.7. Indications that representatives or nationals from a foreign country are acting to increase the vulnerability

of the individual to possible future exploitation, coercion, or pressure;

E2.A2.1.2.8. A substantial financial interest in . . . any . . . foreign-operated business that could make the individual vulnerable to foreign influence.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s) . . . in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;

E2.A5.1.2.4. Personal conduct. . . that increases an individual's vulnerability to coercion, exploitation, or duress. . .

E2.A5.1.2.5. A pattern of dishonesty or rule violations. . .

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The government has established its case under Guideline B. The foreign influence issues related to Applicant's in-laws and his relationship with his wife's friend are mitigated. Applicant's wife is now a U.S. citizen; her parents are now legal permanent residents intent on obtaining U.S. citizenship. They are both retired, father from a career as a coal mine engineer, mother as a teacher. Although I do not consider the mother's membership in the Communist Party to be as benign as Applicant suggests, I nevertheless conclude that her permanent presence in the U.S. makes it unlikely that she

(27)

can be used to influence Applicant. Applicant's wife has little contact with her brother, aunts, or uncles; Applicant has virtually no contact with them. Similarly, the wife's good friend appears to have no contact with the government that would make her a pressure point for Applicant.

However, significant aspects of Applicant conduct since 1992 present continuing security issues. Regardless of the wife's formal relationship with the Russian institute where they met, Applicant--a highly qualified scientist in areas of critical technology--began a romantic relationship with a foreign citizen within 6 months of meeting her and without any indication that he considered the security risk she might present. This poor judgment is not cured by her subsequent marriage to Applicant or acquisition of U.S. citizenship. While she was not yet a U.S. citizen, he disclosed to her the nature of his work for the Defense Department and the fact that he had a clearance. While neither piece of information was classified, the disclosure still increased his exposure to potential influence. In a similar fashion, Applicant engaged in currency transactions on the street, some that he brokered, some his wife brokered (before they were married). The fact that no consequences followed those actions does not cure the poor judgment demonstrated. Nor does the fact that these transactions occurred during a period of time in Russian history when the government was in disarray moving out of the Soviet era cure the poor judgment. Indeed, it calls it further into question. The "black market" purchases and holding \$3,000.00 in small bills for a Russian citizen are other examples of poor judgment, which potentially placed Applicant in a position to be exploited.. (28)

Applicant's sworn statements describe several contacts with foreign citizens that might reasonably be construed as solicitations or probings. Applicant reported these to DSS during 1996, but there is no evidence to suggest he disclosed them before being contacted by DSS. His baseball operations, while not necessarily financially based in a foreign-country nevertheless expose him to potential exploitation, particularly when he takes his tours to countries like China and Russia. Given his technical expertise, his own conduct that exposes him to potential exploitation, and indications that foreign nationals have made overtures to exploit him, I conclude that the risk of potential compromise is simply too great. I resolve Guideline B against Applicant.

The Government has established its case under Guideline E. Applicant's currency transactions and "black market" purchases increased his vulnerability to coercion, exploitation or duress. Further, the information contained in the SOR was examined by a separate agency of the Department of Defense and found to warrant suspension of his clearance, when the Applicant could not satisfactorily resolve counter-intelligence issues concerning unauthorized disclosure of classified information. While I am required to make a de novo review of those facts and issues, I nevertheless conclude that the prior suspension of his clearance warrants extra scrutiny of Applicant's fitness for access to classified information. Applicant has the burden of establishing that he should be granted a clearance notwithstanding the adverse information contained in the record. Applicant has not met that burden. I find Guideline E. against Applicant.

## **FORMAL FINDINGS**

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant



Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: For the Applicant

Subparagraph q: For the Applicant

Subparagraph r: Against the Applicant

Paragraph 2. Criterion E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. Although as correctly noted by Department Counsel (Tr. 9-10), Applicant's denial are accompanied by explanations which essentially admit the underlying facts.
3. Since acquired by another defense contractor.
4. Applicant's wife, as well as her parents and brother, were born in the part of the Soviet Union that is now Ukraine. Recognizing the myriad political and nominal changes that have occurred in the former Soviet Union since the fall of the Berlin Wall in 1989, I have chosen to refer to "Russia" throughout the decision for simplification.
5. SOR, subparagraph 1.a. See, G.E. 3, 5. Although both Applicant and his wife attempted to characterize these organizations as the equivalent of the Boy or Girl Scouts, I do not accept that characterization. Membership in the Young Pioneers was mandatory for children ages 10-14, and Applicant complied. Membership in the Comsolot was also mandatory beginning at age 14, and Applicant remained a member until approximately 1990 (age 22), when the U.S.S.R. was in the beginning stages of its dissolution.
6. Subparagraph 1.b. See, G.E. 5.
7. Subparagraph 1.q.

8. Subparagraph 2.b.

9. Although this date also appears in Applicant's SCA, his wife was actually naturalized in January 1999 (A.E. D, Tr. 112, 283).

10. Subparagraph 1.p.

11. The in-laws have since emigrated to the U.S. as legal permanent residents, and reside with Applicant and his spouse. They intend to become U.S. citizens as soon as they are eligible (Tr. 114).

12. Subparagraph 1.e. See, G.E. 3.

13. Subparagraph 1.f. She joined the party as a career-enhancing action for her employment as a teacher (Tr. 118-119). See, G.E. 3, 5.

14. Subparagraph 1d. See, G.E. 3.

15. Subparagraph 1.k.

16. G.E. 9. See also, A.E. F, G, I, Tr. 220-232; 230-240.

17. It is not clear from the record whether these trips occurred as planned.

18. Subparagraph 1.m.; 2.a.

19. A.E. L.

20. Subparagraph 1.o.

21. Indicating Applicant's understanding that he was illegally exchanging small amount of money on these occasions.

22. Subparagraph 1.n.; 2.a.

23. See, G.E. 4.

24. Subparagraph 1.r.

25. Subparagraph 1.l.

26. Subparagraph 1.j.

27. It appears there is only one aunt and one uncle, a point with little security significance if I had concluded that Applicant's contacts with them were more significant.

28. Applicant's sworn statement (G.E. 2) states that the Russian wanted Applicant to hold the money because the Russian wanted to bring his family to the U.S. At hearing, the explanation becomes that it was all part of the Russian's baseball trips to the U.S. Either way, Applicant's conduct put him in a position to be exploited.