

DATE: June 2, 2003

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26949

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant--a U.S. resident since 1992 and a citizen since 1997--is not subject to foreign influence where his father had emigrated to the U.S. in February 2003, his mother was awaiting imminent approval of her emigration visa in April 2003, and his brother--although still a resident and citizen of Belarus--is not in a position to be pressured in a way that could influence Applicant. Clearance granted.

**STATEMENT OF THE CASE**

On 6 January 2003, 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 6 February 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on 14 March 2003, and received and set by me the same day. I issued a notice of hearing on 18 March 2003 for a hearing on 3 April 2003.

At the hearing, the Government presented two exhibits--admitted without objection--and no witnesses; Applicant presented three exhibits--also admitted without objection--and the testimony of two witnesses, including himself. DOHA received the transcript on 11 April 2003.

**RULINGS ON PROCEDURE**

At the hearing, Department Counsel requested that I take official notice of the State Department web page Country Reports on Human Rights Practices-2002 pertaining to Belarus. I granted the request (Tr. 13-14, 25).

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact.

Applicant--a 29-year-old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant was born in Solnechny, Belarus, in March 1974, making him a citizen of the former U.S.S.R. In August 1990--when he was 16--Applicant came to the U.S. on a People-to-People tour, a 23-day, 7-city cultural introduction to the U.S. Applicant described it as a "caravan of friendship": Washington, D.C., Norfolk, Charlotte, Huntsville, Nashville, Louisville, Chicago, and back to Washington, D.C. In some cities, they stayed in college dorms; in some cities, hotels. In Huntsville, Louisville, and Chicago they stayed with host families, two or three per family.

In 23 days, Applicant fell in love--with America. Although he came to the U.S. thinking that he lived in one of the greatest countries in the world--because his father was working and he thought himself free--he realized just how little freedom he actually enjoyed in Belarus and how much more freedom was enjoyed by Americans. However, he also hit it off with one of his host families, and their 22-year-old daughter. After returning to Belarus, Applicant and the daughter began a long written correspondence; they exchanged telephone calls on a few occasions. By August 1991, the host family asked Applicant if he would be interested in returning to the U.S. to attend university in their hometown. He was. He began to think about coming to the U.S. In June 1992, Applicant and his parents hosted his host mother and the daughter for a visit to Belarus.

In August 1992, Applicant came to the U.S. on a visitor's visa (valid for six months). He stayed with his old host family. They showed him around their city and took him to see other members of their family in nearby cities. In September 1992, Applicant asked the daughter to marry him. She said yes, and they were married in December 1992. In January 1993, Applicant decided he wanted to participate fully in the life of his new family. His in-laws were U.S. citizens, his wife a U.S. citizen; he wanted to become a U.S. citizen. He applied for legal permanent resident status, which he obtained in March 1993. He became a U.S. citizen in January 1997. He got his U.S. passport later that month.

When Applicant became a legal permanent resident, he supported himself and his family by working for an express delivery service. He started as a courier guard and later became the fleet manager for his local station. Two-and-a-half years later, he took a job with an aircraft manufacturer as an interpreter and translator. He eventually went to college, obtaining an undergraduate degree in electrical engineering in May 2001.

Applicant and his wife have been married over 10 years. They have three children, ages 6, 4, and newborn, all U.S.-born citizens. They own their home. They have a rental property--the first home they bought in the U.S. He votes in U.S. elections, state, local, and federal.

Applicant has been back to Belarus twice since emigrating to the U.S.: December 1997 and June 1998. Both times he used his U.S. passport to travel. His Soviet passport expired in 1995 and has not been renewed. Applicant believes, based on his contacts with the Belarus Embassy, that his Belarus citizenship was automatically renounced once he provided the government with a copy of his naturalization certificate.

In 1998, Applicant began talking to his parents about bringing them to the U.S. The living conditions in Belarus were not good, and his father--a subway engineer from 1991 to 1996 (A.E. B)--lost his job and had been forced to retire in 1996 as a result of his involvement in a subway strike. His mother had been a housewife since 1985. Applicant originally submitted the paperwork to bring his parents to the U.S. in March 2000. However, he mistakenly believed he could submit both their names on a single application. As a result, although both parents files went through processing at the same time, final approval for emigration for his mother was delayed. Applicant resubmitted the necessary document for his mother in August 2002. At the time of the hearing, Applicant's father had been in the U.S. since February 2003. Through the intervention of his congressman (A.E. C), Applicant's mother obtained approval of her case on 27 arch 2003, and was literally "sitting on her suitcases" awaiting issuance of her visa. Applicant also sponsored his older brother--an engineer for a food distribution company--for emigration in March 2000. However, being in a lower priority category (brother/sister of U.S. citizen vice parent of U.S. citizen), the processing time for the brother's visa was estimated in January 2003 to be 500-600 days; however, the current estimate is 990-999 days.<sup>(2)</sup> So far, it has been nearly 1100 days. Although Applicant remains concerned about his brother remaining in Belarus,<sup>(3)</sup> he does not believe he would be subject to pressure on his behalf. He knows the security requirements to disclose any such attempts and would follow them.

On 26 May 2001, Applicant executed a Security Clearance Application (SCA)(SF 86) (G.E. 1) on which he truthfully disclosed his foreign connections and travel. On 25 June 2001, Applicant gave a sworn statement to a Special Agent of the Defense Security Service (DSS) (G.E. 2), describing his foreign connections, including his efforts to bring his parents and brother to the U.S. He provided updates on the status of those emigration petitions in his Answer.

The president and CEO of Applicant's company considers him an excellent employee and family man. Applicant was a co-op employee of the company in May 2000 before becoming a full time employee in May 2001.

Belarus--a former Soviet Republic--is ostensibly a republic, but the elected president has undermined democratic institutions since his election in 1994. Security forces arbitrarily arrest and detain citizens, especially for political reasons. There is no freedom of speech. Political opposition is pressured through judicial and extra-judicial means. As a result of the human rights climate in Belarus, the U.S. Government pursues a policy of "selective engagement." However, the government of Belarus is not otherwise hostile to the U.S. There are approximately 10 million residents in Belarus.

## **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 (GUIDELINE 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.A2.1.3. 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.

### **Burden of Proof**

Initially, the government must prove controverted facts alleged in the SOR. 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, but I consider the security concerns mitigated. Although the allegations of the SOR were true at the time the SOR was issued, Applicant's father has emigrated to the U.S. and his mother is all but on her way. Only the brother's emigration case is still pending. However, the record evidence clearly indicates that Applicant's relatives were not agents of a foreign power. Applicant's father is beyond the reach of the foreign power and his mother will soon be, if she is not already. While the brother remains in Belarus, I conclude he is not in a position to be exploited by a foreign power in a way that could make Applicant have to choose between his loyalty to the U.S. and his loyalty to his brother. Further, Applicant would report any effort to pressure him. Accordingly, I resolve Guideline B for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is 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. *See*, [egov.immigration.gov](http://egov.immigration.gov).

3. In the corrupt economy of Belarus, the company has been taken over by the government every time it has shown a profit. However, there is no evidence in the record to suggest direct government contact with the brother.