

DATE: June 4, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05089

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

R. David McDowell, Esquire

SYNOPSIS

Applicant--a 33-year-old married woman who left Ukraine for a better life in the U.S. in 1981 at age 23, and became a U.S. citizen in 2000--was not subject to foreign influence, notwithstanding her ties to Ukraine via sending money and family members, where Applicant's commitment and ties to the U.S. are so substantial that she can be expected to resist and report any potential foreign influence or pressure. Interim security clearance granted in September 2000 on essentially the same facts re-affirmed. Clearance granted.

STATEMENT OF THE CASE

On 28 February 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⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 12 arch 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on 31 March 2003, and received and set by me the same day. On 2 April 2003, I issued a Notice of Hearing for a hearing on 1 May 2003.

At the hearing, the Government presented one exhibit--admitted without objection--and no witnesses; Applicant presented five exhibits--admitted without objection--and the testimony of seven witnesses, including herself. DOHA received the transcript on 12 May 2003.

RULINGS ON PROCEDURE

At the hearing, Department Counsel requested that I take official notice of the U.S. Department of State, Consular Information Sheet for Ukraine, and the 1999 Country Reports on Human Rights Practices for Ukraine. I granted the motion (Tr. 18-19).

FINDINGS OF FACT

Applicant admitted the allegations the SOR. Accordingly, I incorporate these admissions as findings of fact.

Applicant--a 33-year-old senior principal engineer of a defense contractor--seeks to retain the access to classified information she has held on an interim basis since September 2000. She testified during the hearing, and I accept her testimony as credible and true

Applicant was born in 1969 in Simferopol, Ukraine, then part of the U.S.S.R. She grew up there and completed her secondary education there in 1986, finishing atop her class. She speaks fluent English, having studied it since age six. She took and passed entrance examinations into her hometown university, where she studied applied mathematics.

While in university, she came to the northwest United States as an exchange student⁽²⁾ from August-December 1990 and fell in love with the U.S. After her return to Ukraine, she realized how little opportunity there was for her in the former Soviet republic, and how great the opportunities in the U.S. However, she went on to obtain the equivalent of a master's degree in mathematics (with honors) in June 1991. Still, she wondered how she might come to the U.S. to live.

Her opportunity came in Spring 1992, while pursuing post-graduate work at her hometown university. Two visiting mathematics professors from a major U.S. university in the southeast U.S. came to her university to establish an exchange program. Applicant was called in to serve as their translator. Fluent in English and possessed of the mathematics skill to facilitate the professors' mathematics discussions with their Ukrainian colleagues, Applicant so impressed the professors that they asked her to come to their university as a visiting scholar. They helped her obtain a visiting scholar (6-month, non-resident, J-1) visa to come to the U.S. in April 1993. She came with \$50.00 and two suitcases containing all her worldly possessions--mostly clothes she described as so ridiculous looking she did not wear them. She never returned to Ukraine. Indeed, she has not left the United States and possesses no valid passport, either U.S. or foreign. She has no intention of returning to Ukraine because she considers it politically and environmentally dirty.

Shortly after she arrived in the U.S., she made a mathematics presentation to the members of the department that so impressed them that the university presented her with the opportunity to enter their doctoral program in mathematics--which she did--and the university helped her obtain a foreign student (F-1) visa. While in the doctoral program, she worked as a graduate assistant, teaching mathematics courses. In March 1995, she met a friend of one of the math department's graduate students. He was four years older than Applicant and had begun college (his father was a microbiology professor in the university's veterinary school), but had dropped out of the university to pursue other interests. They began dating, fell in love, and married in March 1996. Her academic accomplishments inspired him to return to school himself in September 1996. She obtained her doctorate in mathematics in March 1999. Because her husband still had a year to go before he completed his degree requirements, Applicant entered the university's aerospace engineering program and obtained her master's in aerospace engineering in August 2000.

When Applicant married her husband in March 1996, she applied for legal permanent resident status--which she obtained--and U.S. citizenship as soon as she was able, January 2000. She became a U.S. citizen in June 2000. She described with palpable joy the thrill of becoming a U.S. citizen and having the opportunity to live her life the way she wanted it to be. She has no desire to return to Ukraine, even to see her parents. Her Soviet passport (issued in August 1990), which she used to travel to the U.S. in August 1990 and August 1993, expired in July 1995 and has not been renewed.⁽³⁾

After Applicant received her master's in aerospace engineering, she received a job offer from her current employer and moved to the northern part of the state to begin work. Her job requires a security clearance and she applied for her clearance in August 2000, almost immediately after starting work. She received her interim clearance on 1 September 2000, and has been working with classified information without incident since then. She enjoys the work that her education makes her particularly well-qualified for.

When Applicant's husband completed his degree in computer science, rejoined his wife, and obtained employment himself, they began to feel more settled in their new location. They bought a home in March 2001. They decided to begin a family; their son was born in October 2002. They got another dog.

Applicant's mother, father, and grandmother are Ukrainian citizens, residing in Ukraine. Her mother and father have

been to the U.S. for an extended visit in 2002. Applicant reported their coming visit to the company and to the DSS agent who interviewed her in January 2002. They would like to emigrate to the U.S., but cannot do so while the grandmother--too old and ill to emigrate herself--remains alive. Applicant's father is a retired factory worker and part-time independent automobile mechanic, who has never had any connection to the Soviet or Ukrainian governments which have controlled his homeland during his lifetime. Applicant's mother was a sewing worker in a factory who eventually obtained her undergraduate education in night school and became a clothing warehouse distributor. She is now retired, but has never had any connection with the Soviet or Ukrainian governments which have controlled her homeland during her lifetime. Their retirement income is \$20.00 per month, enough to cover the cost of their apartment. Applicant and her husband contribute financially to her parents support, taking bi-monthly turns with Applicant's sister and her husband of providing approximately \$250.00 per month (\$1,500.00 per year). She has regular contact with her parents, sending them letters and packages with pictures of their grandson. They talk on the telephone.

In March 1993, Applicant's younger sister married a naturalized citizen of the United Kingdom--a native-born Iranian who emigrated to the U.K. when he was 15 or 16 years old for religious reasons.⁽⁴⁾ They met in Ukraine where she was at the same hometown university Applicant attended and he was trying to start a business, which ultimately failed, in part because he would not bribe the Ukrainian officials necessary to make the business succeed. In 1994, they returned to the U.K. where he now runs a flooring company in West Sussex, England. She became a naturalized citizen of the U.K. in 1997. She and her husband have an 8-year-old daughter, born in the U.K. She has been to visit Applicant in the U.S. in 1996 and 1999. She and Applicant have regular contact as well.

Applicant has no financial or other interests in Ukraine, no connection to the Soviet or Ukrainian government, no contacts with Ukrainian citizens other than her parents and grandmother. Her financial interests, her personal interests, and her emotional commitments are all in the U.S. She and her husband have an excellent credit history (A.E. A, D). They pay taxes to the IRS (A.E. B). She described with visible joy the elation of her wedding day, the day of her naturalization as a U.S. citizen, the birth of her child. Several of her witnesses described her joy at becoming a naturalized U.S. citizen.

Applicant knows to report to her company and the FBI any efforts to coerce classified information from her (Tr. 43). In response to Department Counsel's cross-examination about her concerns for her parents in Ukraine, Applicant expressed an unequivocal unwillingness to disclose classified information:

I would never even think about compromising classified information. And this is a question I answered to myself long before I ever had a job that had any kind of sensitivity like that. Because in my opinion, if I cooperate with people like that, I will hurt a lot more people [sic] if I don't cooperate with people like that.

I have a lot in stake in this country. I have a son that I love. I have a husband that I love. And you know if someone threatens to hurt my parents, they are going to hurt them regardless. . . (Tr. 48-49).

Applicant's character witnesses⁽⁵⁾ consider her a truthful, straightforward person, who has excelled as a student, instructor, employee, and mother; who has handled classified information carefully; who has unswerving loyalty to her adopted country; and who has sufficient strength of character to resist and report any efforts by the Ukrainian government to pressure her. I find these witnesses observations of Applicant's truthfulness, candor, and love of the U.S. credible, as well as comporting with my own observations of Applicant

Ukraine--a former Soviet Republic--is governed by a directly elected president and unicameral parliament; outside observers essentially agree that all election results since 1994 reflect the will of the electorate. Nevertheless, Ukraine has a less-than-satisfactory human rights record, although progress is being made. The country is undergoing profound political and economic change as it moves towards a market economy and integrates into Western institutions. There is wide-spread corruption in the government and the economy. However, the private sector continues to grow and now represents a substantial portion of the economy. Still, the transition from a centrally-planned to a market-based economy has been difficult.

There is substantial crime in the population. Unemployment affects women disproportionately and violence against women is a pervasive problem. Political opposition is pressured through judicial and extra-judicial means. However, the

government of Ukraine is not otherwise hostile to the U.S. Indeed, the U.S. provides substantial foreign aid to Ukraine, including support for transition to market economy, civil reform, and democratic reform. There are nearly 49 million residents in Ukraine.

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

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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;

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

E2.A2.1.3.4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required;

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.

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

Under Guideline B for foreign influence, a security concern 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 U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries, or financial interests in other countries, are also relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

In addition to the above concerns, the foreign country at issue is Ukraine, a former republic of the Soviet Union experiencing a difficult transition to a market economy and democratic government. Of course, in every security clearance case an applicant's ties or connections to any foreign country deserve careful examination.⁽⁶⁾ Common sense suggests that such connections do not deserve the same level of scrutiny, however, as a foreign country whose interests are hostile or inimical to the U.S., or a foreign country with an authoritarian or totalitarian government. Accordingly, I have reviewed Applicant's ties or connections to Ukraine additional scrutiny.

The government has established its case under Guideline B, by demonstrating that Applicant's parents and grandmother are citizens and residents of Ukraine. However, the fact that Applicant's brother-in-law is a native-born Iranian, naturalized citizen of the United Kingdom, residing there, lacks security significance. The fact that he was born in Iran lacks significance where he was born when the Shah of Iran--an ally of the U.S.--governed Iran, but fled with his family when the Islamic fundamentalist government began persecuting Baha'is, a religious sect tolerated under the westernized government of the Shah. The fact that he is now a naturalized citizen of the U.K., as is Applicant's only sister and sibling, also lacks security significance, despite the fact that Applicant's contacts with her sister are not casual and infrequent. However, the record evidence clearly indicates that neither her sister nor husband are agents of a foreign power, nor are they in a position to be exploited by a foreign power.⁽⁷⁾ Common sense demonstrates there is nothing in the record to suggest that their relationship with Applicant is such that Applicant would be forced to choose between her duty to her sister and her duty to the U.S. Having concluded that the government has not established its case regarding the sister and husband residing in the U.K., I resolve those Guideline B allegations for Applicant.

I reach the same conclusion regarding Applicant's immediate family residing in Ukraine, albeit for different reasons. Disqualifying Condition (DC) 1⁽⁸⁾ applies given that Applicant has close relationships with immediate family members who are citizens of, or residents in, Ukraine, and she believes she has a duty or obligation to her parents.⁽⁹⁾ In addition, DC 6⁽¹⁰⁾ applies based on her sending money to her parents. The money has some potential to make Applicant vulnerable to foreign influence. That action, coupled with Applicant's family members in Ukraine, raise security concerns due to the potential for foreign influence.⁽¹¹⁾ The remaining disqualifying conditions of Guideline B do not apply given the record evidence.

Nevertheless, I conclude Applicant has mitigated the security concerns. Applicant's immediate family members were not employed by or connected with the Ukrainian military, law enforcement, or a governmental agency during their working life, and they are now retired living on a minimal pension. They were not and are not involved in political, scientific, commercial, or other activities where they might benefit from obtaining U.S. national security information. Given the record evidence, I conclude Applicant's immediate family members are not agents of a foreign power, and under these circumstances, mitigating condition (MC) 1⁽¹²⁾ applies in Applicant's favor. MC 4⁽¹³⁾ also applies as Applicant reported to her company the pending visits of her parents and sister, and to the DSS agent who interviewed her in January 2002. The remaining mitigating conditions of Guideline B do not apply given the record evidence.

Although MC 1 is the only applicable mitigating condition, the analysis does not necessarily end as other facts and circumstances may mitigate the security concerns. First, Applicant's commitment to the U.S. is extraordinarily high. She literally bounced with joy on the stand describing how she felt the day she became a citizen. She left a country that offered her limited prospects for a possibility of becoming an American citizen in a country that offers nearly limitless prospects. She committed whole-heartedly to her new country, even before becoming a citizen. Second, Applicant's ties

or connections to the U.S. are substantial. Since her arrival here in 1993, Applicant can fairly be described as a model immigrant. She obtained her doctoral degree, married, obtained a second master's after encouraging her husband to go back to school to get his degree. Applicant and her husband started a family. Moreover, her husband, child, professional career, and financial interests are in the U.S., and that situation is unlikely to change. Indeed, she has not gone back to Ukraine and has no intention of ever going back, and has not left the U.S. since arriving in 1993. These are examples of ties that bind most members of a participatory democracy such as the U.S. Applicant and her witnesses testified credibly that she has an excellent history of safe handling of classified information and is unlikely to ever be pressured to disclose it to unauthorized persons. Accordingly, based on the record as a whole, I conclude Applicant is a self-reliant, responsible, and trustworthy individual. It is my predictive judgment, also based on the record as a whole, that Applicant has the necessary strength of character so that he can be expected to resist and report any potential foreign influence or pressure by either coercive or non-coercive means.

The Applicant was previously granted an interim clearance on essentially the same facts as here, but that does not preclude the government from re-examining Applicant's eligibility for continued access to classified information or from revoking the clearance if the re-investigation reveals either new concerns or increased concerns. Still, revocation of a clearance where there has been little significant change in an applicant's circumstances should not be undertaken lightly.

Here, the government invokes only one disqualifying condition in its closing argument--family members residing overseas, which suggests that the government is satisfied that Applicant's financial support to her parents does not constitute "conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government." While, Applicant's ties to her parents and grandmother are clear, her parents are 60 years old and her grandmother is 83 and in ill health, making their contacts benign. Her parents plan to emigrate to the U.S. when they are able. They are not employed by the government nor are they agents of the government. None are employed in positions that make them susceptible to pressure by the government. After weighing the record evidence, the foreign influence security concerns raised by Applicant's ties or connections to Ukraine (or to the U.K. for that matter) are mitigated. Applicant has overcome the case against her and satisfied her ultimate burden of persuasion as to obtaining a favorable clearance decision. 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

Subparagraph c: 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 January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Entering the U.S. on a non-immigrant J-1 visa issued for six months beginning 17 August 1990 (Tr. 20).
3. Applicant produced the original passport as an exhibit at the hearing. Among other things, it corroborates Applicant's claimed U.S. visa history, including her legal permanent resident status. However, because I considered the now-expired

passport an important legal record of her travel and visa history, I did not admit the passport into the record, but recorded the pertinent information into the transcript (Tr. 20-21).

4. His family was Baha'i, a religious minority in Iran, that became increasingly persecuted by the Islamic fundamentalist government which came into power in Iran after the fall of the Shah in 1979.

5. A math department professor from Applicant's doctoral program, who has previously held a clearance; an aeronautical engineering graduate student who had Applicant as an instructor; the aeronautical engineering professor who served as her advisor and mentor during her master's program; the company division head who hired her and supervises her (who has a current clearance); a co-worker who has worked closely with Applicant on several classified projects; and her husband.

6. *See* ISCR Case No. 97-0699 (November 24, 1998), p. 3. Nothing in Guidelines B or C "requires that the foreign country in question have interests that are inimical to the interests of the United States."

7. I note that the United Kingdom is a free society whose democratic institutions are similar to our own, long preceded our own, and indeed form the basis for our own. While the U.S. does not share a unity of interests with the U.K., both governments have long acknowledged the special relationship between the two countries. The U.K. is neither a totalitarian regime, nor a regime known to engage in human rights violations, nor a known sponsor of state terrorism. Thus, it is extremely unlikely that the U.K. government would target Applicant's family to extract information from Applicant. Consequently, I conclude that Applicant's family in the U.K. is not in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his family and the U.S., based on all available evidence.

8. "An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country."

9. *See* ISCR Case No. 98-0507 (May 17, 1999) at pp. 10-11 (discussing various facets of security significance of family ties in a foreign country).

10. "Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government."

11. *See* ISCR Case No. 99-0511 (December 19, 2000) at pp. 10-11 (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence).

12. "A determination that the immediate family member(s), (spouse, father, sons, daughters, brothers, sisters), cohabitant, or associate(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."

13. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required.