

DATE: May 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05988

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a Russian native, acquired naturalized citizenship in August 2000. Prior to their emigration to the U.S. in June 1994, Applicant and her spouse worked in furtherance of Russian nuclear power and military interests. Applicant has not acted to conceal these past employments for foreign government-run entities, having listed them on her applications for her current defense job and her security clearance. There is no evidence Applicant or her spouse is currently involved in outside employment or activities that pose a conflict with Applicant's security responsibilities. Clearly invested in her life in the United States and committed to making a contribution to the national interest through her work for a defense contractor, Applicant is not likely to be vulnerable to foreign influence. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) on September 23, 2002, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based, in part, on foreign influence concerns (guideline B) related to the Russian citizenship and residency of family members (father, brother, mother-in-law, sister-in-law); her father's past service in the then Soviet military, her father's present involvement in Russian veterans' affairs, and his membership in the Community Party; her brother's past employment at a Soviet naval base; the Russian citizenship of her spouse and her younger daughter; and Applicant and her spouse's previous jobs in support of Russian military and nuclear interests. Applicant's past employments as a design engineer in Russia from 1981 to July 1991 were alleged to raise guideline L (outside activities) as well as guideline B concerns. The Government also cited personal conduct (guideline E) concerns related to Applicant's negative response on her security clearance application as to whether she had ever been employed by a foreign government, firm, or agency.

On October 22, 2002, Applicant submitted a response to the SOR, which was not considered complete because she had failed to admit or deny subparagraph 1.h. under guideline B. On November 26, 2002, Applicant executed a revised Answer, in which she indicated she had "very infrequent" contact with her father and brother, who remain citizens and residents of Russia, and was uncertain if her father was still a Communist Party member. She related her elderly mother-in-law had applied for permanent residency in the U.S., and her daughter had acquired U.S. citizenship in January 2002. Applicant admitted her former employments in Russia, but denied any intentional concealment of these positions. Applicant requested a hearing, and her case was assigned to me on January 21, 2003. Pursuant to formal notice dated January 29, 2003, a hearing was scheduled for February 25, 2003.

The hearing was held as scheduled on February 25, 2003. Before the taking of any evidence, SOR subparagraph 3.a. was amended, on the Government's motion, to allege that Applicant falsified question 17.b. (vice question 13) of her December 2000 security clearance application (SF 86) when she responded "No" to whether she was now or had ever been employed by or acted as a consultant for a foreign government, firm, or agency. The Government's case consisted of five documentary exhibits, which were entered without any objections. In addition to her testimony, Applicant submitted ten exhibits, which were admitted, and the testimonies of three coworkers-the director of electrical design and engineering division, the engineering manager in Applicant's department, and the company's director of security. With the receipt on March 7, 2003, of the transcript of the proceedings, this case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 43-year-old electrical engineer who has worked as an engineering specialist for a defense contractor (company A) since January 2001. Applicant was granted an interim security clearance in mid-January 2001, which she held until it was withdrawn in late September 2002, following issuance of the SOR. Assigned quality assurance responsibilities thereafter that do not require access to classified information, Applicant seeks a secret security clearance so that she can continue her employment with company A.

Applicant was born in July 1959 in Russia (then the Union of Soviet Socialist Republics) to an officer on active duty in the Soviet military and his spouse. As a military officer, Applicant's father was required to maintain his membership in the Communist Party, and observance of religion was not permitted in the family home.

Raised in Russia with her older brother, Applicant in about 1974 joined a Communist youth organization, which was required of those 14 years of age and older. Applicant attended a physics and mathematics-oriented high school, where she also received instruction in military education and the use of a Kalashnikov rifle. Following her graduation in June 1976, Applicant pursued electrical engineering studies at the local polytechnic institute. At the university, Applicant met her first husband, who was pursuing studies at night while working as an assistant in the department of mechanical engineering. Married in December 1978 in Russia, they had a daughter in July 1979. In June 1981, she received the equivalent of a master's degree in electrical engineering. Until Fall 1981, Applicant remained at home taking care of their daughter. In April 1984, Applicant and her first husband divorced, with Applicant keeping custody of their daughter.

With job opportunities in her locale concentrated in the military and defense arena, Applicant in Fall 1981 went to work as a design engineer for a Russian government-run scientific research institute (foreign entity X) involved in the design and manufacture of power distribution systems and control panels for surface and sub-surface military ships. Applicant was responsible for the technical management of research and development projects related to switch gears for power distribution systems of Russian submarines. While working for foreign entity X, Applicant met her current husband, who was at the time employed as an engineer for the institute in another group in the same department. He had a son from a prior marriage, who was born in 1969. Married in July 1985, Applicant and her second husband had a daughter born to them in Russia in November 1986. Applicant's spouse had a "second level" Russian security clearance for his duties at foreign entity X.

Sometime in 1986, Applicant's spouse left the institute for an engineering position with a state-run design facility for military shipyards manufacturing aircraft carriers and submarines. He held a "second level" Russian security clearance

for his duties there as well. After about a year, the work was limited at the company for someone with his narrow specialty, so Applicant's spouse returned to foreign entity X in March 1987, where Applicant was still employed. Sometime that year, she was issued a "third level" Russian security clearance that was needed for her to enter a military plant.

With the fall of the Soviet regime in the late 1980s, Applicant and her spouse felt the resentment of the local populace toward the well educated ("the intelligentsia"). Due to the lack of economic opportunities and for religious reasons, ⁽¹⁾ Applicant and her spouse decided to emigrate to the United States. Since they had security clearances for their work at foreign entity X, they were prohibited from leaving Russia for a period of years after the termination of their employ. ⁽²⁾ For Applicant, who had a "third level" clearance, the period was five years. In December 1989, Applicant quit her job at foreign entity X for a design engineer position at a state-run scientific institute involved in nuclear power (foreign entity Y). At the time of her termination, Applicant certified she would not disclose any sensitive information she had learned on the job. In her new position at foreign entity Y, her duties included the design of electrical circuits for Russian nuclear power plants, which did not require a clearance. In March 1990, Applicant's spouse left his job and joined Applicant at the nuclear power institute.

In July 1991, Applicant left her job at foreign entity Y to care for her ill mother until her mother's death. Applicant's spouse had been self-employed since that arch, and was collecting a disability pension. That October, Applicant and her spouse applied to emigrate to the United States under the sponsorship of the sister-in-law of a maternal uncle's nephew. The process was complicated, not only by bureaucratic requirements of the two countries, but by her first husband's refusal to grant permission for the daughter born to them in 1979 to leave Russia. Applicant eventually received authorization to take her daughter without his permission because he had not cared for their daughter for many years. While awaiting official action on their application, Applicant and her spouse were self-employed, Applicant as a dress designer/dressmaker.

In December 1993, Applicant was issued a Russian passport, valid for five years. In June 1994, Applicant and her family (spouse, stepson, and two daughters) emigrated to the United States. Applicant traveled to the United States on her Russian passport. Applicant's emigration caused some strain in the relationship with her father, who was opposed to it. ⁽³⁾ Her father, who retired as an officer from the Soviet military in the early 1970s, taught military preparation education at district high schools, including rifle use, shooting, chemical, nuclear and biological weapons response, until sometime in the late 1980s. Applicant also left behind in Russia her brother, an electrical engineer by education, who had worked in a civilian capacity at a remote Soviet military base from 1972 to 1988, and had since been engaged in the buying and selling of goods, including by barter, at local markets.

Eligible for public assistance available to new immigrants in the United States, Applicant and her spouse decided they could survive based on their education and energy alone. The second week after the family's arrival in the United States, Applicant's spouse registered his home repair and service business with the state. In their second month in the United States, Applicant got a job in clothing alterations for a large department store. From February 1996 to August 1997, Applicant worked as a Russian language interpreter on a part-time basis for four different companies, providing translation services for medical appointments and medical descriptions, for teachers giving orientation classes at a refugee center to arrivals from countries formerly part of the USSR, and for a local school to communicate with students' parents who spoke only Russian. Applicant's spouse worked as a janitor for about a year and as an assembler for a local company for two years.

Circa November 1996, Applicant went to work for a Japanese company in the United States, where she developed new standards for their communications systems to comply with United States requirements. Managed by Japanese nationals, Applicant continued a relationship with her supervisor after she left the company in 1997, corresponding with him about once a year by electronic mail during the holidays.

In August 1997, Applicant quit her job at the Japanese company and moved with her spouse and two daughters across the country where the elder daughter had been accepted into a prestigious university. Applicant's stepson elected to remain in the area where they had originally settled in the United States, awaiting United States action on his petition to bring his wife and son, who were living in Russia, to the United States.

Within a week of arriving in their new area, Applicant's spouse registered his home improvement/repair business with the state. As her daughter was pursuing her bachelor of science degree at the technological university, Applicant commenced undergraduate studies in September 1997 at another college in the area. That December, Applicant began working as a manufacturing engineer for large corporation while continuing part-time studies in business administration.

In December 1998, Applicant's Russian passport expired. Since she did not intend to return to Russia, she did not renew it. In November 1999, Applicant's older daughter acquired United States citizenship through naturalization.

Sponsored by Applicant and her spouse, and with their financial backing, Applicant's father and brother spent three months with Applicant and her family in the United States in early 2000. Applicant made an effort to make her father feel comfortable, taking him to museums and arranging for a meeting with a local veterans' group, as he had been involved in Russian veterans' affairs on a volunteer basis since the late 1980s. He did not like the United States, and in March 2000, he and Applicant's brother returned to Russia. Applicant's father, who had been living since 1993 with a woman whose son and grandson were both in the Russian military, informed Applicant he had been impressed by this woman's grandson, who had completed in 1999 or 2000 the military academy for highest ranking officers. Applicant's brother returned to his job as a driver for a president of a Russian company.

In June 2000, while attending a meeting of women engineers, Applicant attended a job fair where she spoke with representatives from defense contractor company A. Interested in employment with the company because of the similarity in work to what she had done for foreign entity X, and her belief from past experience that the defense industry attracts "the best and brightest talents," Applicant provided company A her resume, even though she lacked the United States citizenship required for hire. On that resume, Applicant listed her past employment with foreign entity X as having been from 1981 to 1994. Applicant did not list her job with the Russian nuclear power institute as she did not like that job and it was unrelated to the work she was seeking.

In August 2000, Applicant was awarded her bachelor of science degree in business administration. That same month, she became a United States naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. Applicant, who considered herself to be a citizen of Russia no longer, made no effort to notify the Russian authorities of her acquisition of United States citizenship, or to determine whether her acquisition of United States citizenship automatically revoked her Russian citizenship.

Two weeks after she became a United States citizen, Applicant applied for employment with company A. On her job application, Applicant listed her past employments with foreign entities X and Y, indicating that she worked at the ship engineering facility to November 1991 (vice December 1989), and at the nuclear power facility from November 1991 to May 1994 (vice December 1989 to July 1991) because it was easier than explaining that she had been unemployed and then self-employed awaiting permission to emigrate.

On receipt of her job application, company A's director of security, who has a top-secret security clearance and was then responsible for all hiring at the facility, reviewed her application and resume to ensure that if the company needed her technical capabilities, she would be able to obtain a United States Department of Defense security clearance. A decision was made to extend an offer to her as an engineering specialist, and at the request of the company, Applicant executed a Questionnaire for National Security Positions (SF 86) on December 17, 2000. Applicant provided the dates of United States naturalization for herself, her daughter by her first husband, and her stepson, the stepson having become a United States citizen in November 2000. She disclosed she had an active United States passport, which was issued to her in late September 2000. Applicant reported the Russian residency and citizenship of her father, brother, mother-in-law, sister-in-law, and spouse of her stepson, as well as the United States residency and Russian citizenship of her spouse and younger daughter. Applicant included in response to question 11 regarding employment activities, her past jobs with foreign entities X and Y, providing the same dates for the jobs as reflected on her employment application. Since Applicant was a Russian citizen when she worked for these Russian government-run institutes, she did not consider her employment with these state-run entities to be foreign to her during her employ, so she responded "No" to question 17.b. ["Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?"].

The local supervisor of the Navy's shipbuilding office reviewed Applicant's SF 86 in early January 2001 and granted her a limited interim confidential security clearance. With this access authorization, Applicant was allowed to go to work for company A as an engineering specialist. On January 19, 2001, the Department of Defense issued Applicant an interim secret clearance. Applicant was assigned responsibilities in the area of electric power distribution systems for submarines-work directly related to what she had done for foreign entity X. When it became apparent that Applicant had expertise and interest in process improvement and cost reduction initiatives, Applicant was tasked with also leading the entire directorate's work in that area. On her own time, Applicant pursued an M.B.A. degree at the college from which she had received her bachelor's in that discipline.

In February 2001, the wife and son of Applicant's stepson emigrated from Russia to the United States. That June, Applicant and her spouse sponsored and paid for his mother and sister to visit them in the United States and attend their daughter's college graduation. Applicant's sister-in-law, who has been employed for about thirty years in a clerical position at the Russian university from which Applicant graduated, stayed with Applicant and her spouse for two months, returning to Russia in August 2001. Applicant and her spouse managed to get his elderly mother's visa extended, which required several telephone calls by Applicant and her spouse to his sister in Russia during the February/March 2002 time frame to obtain necessary documentation. In summer 2002, Applicant's stepson filed an affidavit supporting his grandmother's permanent residency in the United States, on which the family was awaiting approval as of March 2003.

Applicant was interviewed by a Defense Security Service (DSS) special agent on November 26, and 28, 2001, about her foreign background, including her past employment in Russia and present connections with Russian relations, and her emigration to, and employment in, the United States. Applicant disclosed her holding of a low-level Russian security clearance when she was employed by the Russian ship's electrical engineering institute. Debriefed on leaving that job, she indicated she felt she could reveal her work and information learned from working on Russian submarines "because all that information should be declassified due to the passage of time." Regarding the family's emigration, Applicant related that before the move, they told others their destination was another Russian city rather than the United States to avoid any objections to their emigration, which was primarily for religious purposes. Of her Russian relations, Applicant indicated she had paid for her father, brother, mother-in-law and sister-in-law to visit the United States in the hope they would stay, and that her mother-in-law had been residing with her in the United States since June 2001. Applicant characterized her relationship with her father and brother as distant, and described contact limited to birthday and Christmas cards. Applicant denied any contact with the Russian government or its representatives since her emigration in June 1994. Applicant indicated she considers herself a citizen solely of the United States, and expressed her willingness to formally notify the Russian government that she had given up her Russian citizenship if necessary to obtain a Department of Defense security clearance. Applicant denied any interest or intent to return to Russia in the future, even for a visit.

Following her initial meeting with the DSS agent, a typewritten statement was prepared based on the information provided in her first interview. When Applicant met with the special agent on November 28, 2001, to review her statement, she brought her Russian workbooks that detailed the dates of her foreign employ. Applicant corrected the dates of her work at foreign entities X and Y, and acknowledged she had erroneously reported on her employment application for company A that she had worked for foreign entity Y from November 1991 to May 1994. Asked why she had responded "No" on her SF 86 to question 17.b. regarding work for a foreign government or agency, Applicant answered, "I did not considered [sic] my job in Russia as foreign because I was a Russian citizen at that time."

On November 30, 2001, Applicant was interviewed for a third time by the DSS agent. Applicant provided details about her work as a Russian interpreter in the United States. Asked why she had indicated on the resume submitted for employment to company A that she worked for foreign entity X from 1981 to 1994, Applicant responded, "On that resume, I left off my employment with [foreign entity Y] because I did not like that job and thought the other job looked better." Applicant reminded the agent that she had listed both jobs for her employment application, although with inaccurate dates of employ, which she attributed to poor recollection.

In January 2002, Applicant's younger daughter became a United States naturalized citizen. As of March 2003, Applicant's spouse had not succeeded in his efforts to become a United States citizen as he failed to pass the English language test. During spring semester 2002, Applicant's spouse took an English as a second language course at a local

community college, earning a grade of C.

Circa late September 2002, the Department of Defense withdrew Applicant's interim secret security clearance following the issuance of the SOR. On being notified of the clearance withdrawal in late October 2002, Applicant was given quality assurance duties in the electrical power distribution systems department at company A, and a greater emphasis on the process improvement work, since neither requires access to classified information. Applicant's supervisors, coworkers, and the director of security at company A recommend Applicant for access to classified information, having observed nothing that cause them to question her technical capabilities, including her ability to handle classified information, her ethics, or her loyalty to the United States. The dean of the college of advancing studies where Applicant has pursued her M.B.A. endorses Applicant's application for access as well, citing her dedication to her studies, family, and work, and her disposition for adhering to regulations and deadlines.

Applicant provides no financial support for any relations in Russia. Applicant regards her relationship with her father and brother as distant. She contacted her father in Russia by telephone in late July 2002, twice in early August 2002, and twice on his birthday in December 2002. Applicant is unaware if her father is still a member of the Communist Party. Applicant did not telephone her brother in either 2001 or 2002. Applicant's spouse contacted his sister on several occasions over the February/March 2002 time frame in Russia. Applicant contacts her stepson and her Russian wife, who continue to reside in the United States, about once per month as of March 2003.

Applicant has not had any contact with those individuals with whom she worked in Russia since she emigrated to the United States in June 1994.

Neither Applicant nor her spouse has any financial assets in Russia. Applicant wants no connection with her homeland. She is not affiliated or involved in any Russian cultural organization in the United States. Applicant and her spouse own their home in the United States, which they purchased in about July 2001 in a community chosen in relation to its distance from a private school where the younger daughter had hoped to attend as a day student. For the 2002/03 school year, Applicant's younger daughter was being home schooled, while her older daughter was pursuing graduate studies in astronautical and aeronautical engineering at the university where she earned her undergraduate degree.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Influence

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 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 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 or present in, a foreign country.

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists

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

Outside Activities

E2.A12.1.1. The Concern: Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

Not applicable.

Personal Conduct

E2.A5.1.1. 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 also include:

Not applicable

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

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

upon trust and confidence. Where the 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 she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines B, L and E:

Applicant, a United States citizen since her naturalization in August 2000, emigrated with her spouse and children (two daughters and a stepson) to the United States from Russia in June 1994, leaving behind her father and brother, and her spouse's mother and sister. As of March 2003, Applicant's spouse had not been successful in his efforts to acquire United States citizenship, due to his lack of facility in the English language. Applicant's mother was living with Applicant and her spouse, awaiting official action on her application for permanent residency in the United States. Moreover, Applicant's father, brother and sister-in-law are Russian citizens living in Russia. Under guideline B, foreign influence, a security risk **may** exist when an individual's immediate family, including cohabitants, and other persons to whom she is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. (4)

The foreign influence concerns engendered by the foreign citizenship and/or residency of immediate family members may be mitigated where it can be determined 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 (*see* E2.A2.1.3.1.). Applicant has a particularly heavy burden to demonstrate she is not vulnerable to undue foreign influence. Throughout the 1980s, Applicant and her spouse worked in furtherance of Russian military interests. Applicant's father served as an officer in the Soviet military until about 1976 and as an instructor in military techniques at the high school level until the late 1980s. From 1993 to at least 2000, her father had a personal relationship with a woman whose son and grandson are officers in the Russian military. Applicant's brother was a civilian employee at a Soviet naval installation until 1988. Applicant's sister-in-law has worked for the same state technological university in Russia for the past 30 years.

Applicant and her spouse's emigrations to the United States, with the termination of all connection to their former employers in Russia, mitigate the risk of undue foreign influence related to their past service on behalf of Russian military and nuclear interests. There is no evidence Applicant or her spouse has had any contact with their former coworkers, who are likely unaware of their emigration to the United States. When Applicant quit her job at the shipyard institute to facilitate her emigration, she told others she was moving to a major Russian city to avoid any problems with her plans to leave Russia. (5) On arriving in the United States, Applicant did not register with the Russian consulate. In August 2000, Applicant became a United States citizen, renouncing emotionally, if not also legally, (6) her Russian citizenship. Invested in the American culture, both professionally and educationally, Applicant in contrast is not a member of any Russian cultural organizations, and she has made no effort to establish friendships among other Russian emigres. Although she had a Russian passport in her possession until it expired in December 1998, she used it only once-which was to enter the United States in June 1994. This is not a foreign preference case, but Applicant's emigration and acquisition of United States citizenship, which required a significant amount of perseverance on her part, render her less susceptible to foreign influence or pressure than had she continued to cultivate ties to Russian institutions or ideologies.

While Applicant's spouse has not yet become a United States citizen, it is not for lack of desire. Unable to demonstrate the English language proficiency required to become a United States citizen, Applicant's spouse took a class at a local community college during the spring semester of 2002. At the recommendation of the dean of the college of advancing studies where Applicant has furthered her education in business administration, Applicant's spouse availed himself of English language tutoring. His United States continuous residency since June 1994 and orientation to life here (which

includes home ownership and establishment of his own home improvement/repair business) greatly reduce the risk of vulnerability to foreign influence, coercion or pressure. Applicant's mother-in-law, who has been residing with Applicant and her family since June 2001, is unlikely to fall prey to undue foreign influence, given her elderly age and her presence in the United States.

With respect to those family members who remain Russian resident citizens, Applicant's father has volunteered since his retirement on behalf of Russian veterans' affairs. Applicant's brother has worked since about 1988 as a driver for a president of a commercial company in Russia. Applicant's sister-in-law is employed in a clerical capacity for the technical university in Russia from which Applicant graduated in 1976. There is no evidence any of these foreign national family members are agents of a foreign power.⁽⁷⁾ The risk of foreign influence being brought to bear on these relatives cannot be discounted, especially on Applicant's father, a retired military officer who remains active in veterans' affairs.⁽⁸⁾ However, Applicant is not likely to be susceptible to any efforts by foreign authorities to gain improper influence through these foreign relations. Applicant characterized her relationships with her father and brother as distant and her contacts with them as casual and infrequent. Nothing in the plain language of E2.A2.1.3.3. precludes its application of this mitigating factor to family members,⁽⁹⁾ although contacts with an immediate family member (which includes father and sibling under the Directive) raise a rebuttable presumption that those contacts are not casual in nature. Applicant paid for her father and brother to travel to the United States in early 2000, and they stayed with her in her home for about three months. Applicant admits that she tried to persuade her father to remain in the United States, to the extent of introducing him to local veterans. While such efforts would normally indicate closeness, Applicant also testified to her relationship with her father being "broken," and that he has not been supportive of her move to the United States-not because of the geographical distance-but because he regarded her as a "defector." In the last couple of years, Applicant's contact with her father has consisted primarily of a rare phone call and cards on his birthday and Christmas. She called her father a few times in late July 2002/early August 2002, and on his birthday that December. Applicant did not telephone her brother at all in 2001 or 2002. It is not likely Applicant would jeopardize those family members to whom she is closest-all of whom live in the United States-for her father, with whom she has a strained relationship, or her brother, to whom she is not particularly close. As for her sister-in-law, contact is initiated by Applicant's spouse, which has been a few times per year on average since June 2001, with the exception of the February/March 2002 time frame when they needed documentation to support her mother-in-law's application for permanent residency.

Frank about her foreign relatives, Applicant has volunteered to the Department of Defense that her father was a member of the Communist Party when he served on active duty. Applicant's candor about her foreign connections (relatives and past jobs) augurs favorably for her reporting any improper foreign contacts or threats. Those who have had the opportunity to know Applicant in the college setting and at work have the utmost regard for her personal integrity and ethics. The director of naval architecture at company A, who has worked with hundreds of personnel in his 38 years with the defense firm, considers Applicant to have "a strong record of the highest ethical standards." Coworkers attest to Applicant's intelligence, motivation, technical ability, and her loyalty to her employer and her adopted country. In recommending Applicant for a clearance, the dean of the college of Applicant's graduate studies, stated in part:

I am so thrilled [Applicant] is so energetically pursuing a security clearance. Granted this, she will have a chance to be more influential in sharing the opportunities America has provided her and her family. I see her comprehensive experiences and age as an opportunity for the U.S. Federal Government to credit themselves with the foresight to provide a new immigrant a greater leadership role in America . . . I feel [Applicant] possesses the patriotism and a desire to give back to the United States. . . . (see Ex. E).

These testaments to Applicant's significant professional accomplishment and strong personal character confirm that Applicant has not only taken full advantage of those opportunities presented to her in the United States, but she is grateful for them. The Government was justified in looking into her background and probing the nature of her relationships with Russian nationals to determine whether her access presents a risk to the Nation's security, but Applicant has answered those concerns by her dedication to her immediate family (spouse and daughters), her demonstrated pursuit of "the American dream," and her contributions to her defense contractor employer. Subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h. and 1.i., are resolved in her favor.

The Government has alleged that Applicant's work for foreign entities X and Y as a Russian citizen before her

emigration, raises independent concerns under guideline L, outside activities. Under the Directive, any service, whether compensated, volunteer, or employment with: a foreign country (E2.A12.1.2.1.), a foreign national (E2.A12.1.2.2.), a representative of any foreign interest (E2.A12.1.2.3.), or any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs or protected technology (E2.A12.1.2.4.) could present a conflict with an individual's security responsibilities. Although the Directive does not specify that this service, employment or activity be concurrent with one's defense duties, it is implicit in the guideline, which provides for mitigation if one terminates the employment or discontinues the activity on being notified that it is conflict with one's security responsibilities (E2.A12.1.3.2.). In the absence of any evidence that Applicant has been involved in outside employment or service for any foreign entity or person since she started working for company A, there is no present guideline L concern. Favorable findings are warranted as to subparagraphs 2.a., 2.b., and 2.c. of the SOR. [\(10\)](#)

The Government alleged under guideline E, as amended, that Applicant deliberately falsified her security clearance application by responding negatively to whether she had ever been employed by, or acted as a consultant for, a foreign government, firm, or agency. When she was interviewed by the DSS agent, Applicant indicated she responded "No" regarding any foreign employment with a foreign government or agency as she did not consider her work in Russia as foreign because she was a Russian citizen during her employment. In her response to the SOR, Applicant related she had never worked as a consultant, and did not associate her employment for state-run companies as government service, which she understood to be work for some committee or department of the Soviet government. At her hearing, she testified she primarily answered the question from the viewpoint of her status when she worked for the foreign entities. She added that since there were no privately run companies in Russia during the 1980s, working for the government meant to her being employed in a Communist Party committee or in a government agency. In support of her denial of any intentional concealment, Applicant cites her disclosure in response to the employment activities inquiry on the SF 86 of her work at foreign entities X and Y.

While the Government is correct in noting that Applicant listed inaccurate dates for this Russian employment on her SF 86 and in her application for employment with company A, and she did not report her work with foreign entity Y on the resume submitted for her current position, Applicant has credibly explained that the errors in dates were due to inaccurate recollection, and her omission from her resume of her work at the nuclear power facility was due to decision on her part that the position was not related to the work she was applying for. When Applicant was initially interviewed by the DSS agent in November 2001, Applicant gave dates for her foreign jobs similar to her SF 86 disclosures. Following her initial interview, a typewritten statement was prepared including the incorrect dates. To her credit, when Applicant met with the agent to review the statement, she brought her Russian workbooks to her interview, and corrected the dates of her past employments for the record. Had Applicant intended to conceal her foreign employment from the Government or her present employer, it stands to reason she would not have reported these jobs in response to question 11 on the SF 86 or on her application for work at company A. Subparagraph 3.a., as amended, is found for the Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Paragraph 2. Guideline L: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Paragraph 3. Guideline E: FOR THE APPLICANT

Subparagraph 3.a.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant testified a combination of circumstances led them to emigrate, the primary reason being the freedom to practice their religion. Applicant related all of her mother's relatives belonged to a pentecostal denomination, and that since her father was a communist, nothing related to religion was allowed in their home. In Russia, she and her spouse attended a pentecostal church which met in an apartment (*see* Ex. 2). Society's rejection of the "intelligentsia" was another reason. (Transcript pp. 131-32).
2. There is no evidence that Applicant's spouse held a Russian security clearance for his work at foreign entity X from 1987 to March 1990, although he held a "second level" security clearance until 1986. According to Applicant, a "second level" security clearance is higher than the "third level" security clearance which she possessed. (Ex. 2).
3. Applicant testified with respect to her father, "He was against the move and not because his daughter is moving. I would guess, being a communist, he just maybe felt like I am a traitor, a defector or whatever." (Transcript p. 134).
4. 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 or present in, a foreign country.
 - E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.
5. The Government has not alleged any foreign preference concerns related to Applicant's past employment on behalf of a foreign entity.
6. It is not clear whether Applicant is still recognized by Russia as a citizen of its country. Applicant does not consider herself a Russian citizen and she has taken no action consistent with Russian citizenship since she became a United States citizen.

7. Having close relatives with connections to a foreign government is potentially security disqualifying under guideline B (*see* E2.A2.1.2.3.), but not every person who has a connection to a foreign government is an agent of a foreign power.

8. As articulated by the DOHA Appeal Board in ISCR Case No. 00-0317 decided on March 29, 2002:

Under Guideline B, the presence of family members in a foreign country must be evaluated both in terms of (i) possible vulnerability to coercive pressure or influence being brought to bear on, or through an applicant's family members in a foreign country, and (ii) possible vulnerability to noncoercive means of influence being brought to bear on, or through, an applicant's family members in a foreign country.

9. *See* DOHA Appeal Board decision in ISCR Case No. 00-0484, dated February 1, 2002.

10. Assuming *arguendo* that Applicant's past foreign employments were to fall under guideline L, they would be mitigated on the basis that they were discontinued more than ten years ago. In any event, SOR subparagraph 2.c., which alleges her employment at company A and grant to her of an interim secret clearance, cannot stand alone as a basis to deny clearance under guideline L. Her employment for the defense contractor, which has triggered the clearance request at issue, is not an outside activity which could pose a conflict with her current security responsibilities.