

KEYWORD: Foreign Influence

DIGEST: Applicant, a natural born United States citizen, married a Russian citizen in February 1999. He met her while she was attending college in the U.S. on a student visa. His wife's mother, father, and two sisters are citizens and residents of Russia. Applicant has failed to mitigate the foreign influence security concern that exists in this case. Clearance is denied.

CASENO: 02-27332.h1

DATE: 02/22/2005

DATE: February 22, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-27332

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

## **FOR APPLICANT**

Connie E. Andrews, Personal Representative

### **SYNOPSIS**

Applicant, a natural born United States citizen, married a Russian citizen in February 1999. He met her while she was attending college in the U.S. on a student visa. His wife's mother, father, and two sisters are citizens and residents of Russia. Applicant has failed to mitigate the foreign influence security concern that exists in this case. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 2, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR, dated March 17, 2004, requested a hearing, and admitted all SOR allegations, except subparagraphs 1.a. and 1.c.

The case was assigned to me on October 20, 2004. A notice of hearing was issued on December 2, 2004, scheduling the hearing for December 16, 2004. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7. GE 1 and 2 were admitted into the record, and administrative notice was taken of the information contained in GE 3-7 without objection. Applicant testified, called his wife and four others persons to testify on his behalf, and submitted seven documentary exhibits that were marked as Applicant's Exhibits (AE) 1-7, and admitted into the record without objection. The transcript was received on December 29, 2004.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 35-year-old man who has been employed by a defense contractor as an electrical designer since July 2002. He was previously employed by a different federal contractor as a marine designer from October 1998 to July 2002. He graduated from college with a bachelor of science degree in engineering technology in June 1998.

Applicant met his wife in the fall of 1995 while they were both students at the same college. They began dating in June 1996, and, after they graduated in June 1998, moved together to his former state of residence where they resided with his parents. Applicant married his wife on February 14, 1999. They purchased a home in August 2003, where they now live with their 10-month-old son.

Applicant's wife is a Russian citizen. She was born, raised, and lived in Russia until she came to the United States in 1994 on a visa that was issued to allow her to work at a camp for three months. While in the U.S., she applied for and was accepted into a scholarship program at a U.S. university. She obtained a student visa and attended that university from 1994 until she graduated in June 1998 with a degree in social work and behavioral science. She had been awarded a degree in English and a teaching certificate from a Russian linguistics university before she came to the U.S. in 1994.

Applicant's wife obtained permanent resident alien status on May 1, 2000. She received a master's degree as an education specialist from a U.S. university in ay 2003, and is now employed as a school psychologist in a public school system. She has not applied for U.S. citizenship. Applicant provided a statement to a special agent for the Defense Security Service (DSS) on September 10, 2001 in which he stated she did not plan on seeking U.S. citizenship at that time "because she wants to maintain the flexibility to return to Russia to visit with her family." (GE 2) She testified she has not applied for U.S. citizenship because she was too busy with school, but does plan on doing so in the future.

Applicant's mother-in-law, father-in-law, and two sisters-in-law are citizens and residents of Russia. His mother-in-law is 65 years old, a retired school teacher, and receives a pension. His father-in-law is 64 years old, a retired power company lineman, and receives a pension. They now reside with one of Applicant's sisters-in-law who pays them for caring for her child. One of Applicant's sisters-in-law is a 36-year-old single mother, and employed as something akin to an accountant. The other sister-in-law is a 34-year-old housewife. Her husband is engaged in some sort of financial work.

Applicant's mother-in-law and two sisters-in-law came to the U.S. in 1999 to attend his wedding. One of his sisters-in-law returned in the summer of 2003 for a 10-14 day visit. Applicant's mother-in-law came to the U.S. in September 2004 to help in caring for his son, and was to stay in the U.S. until the end of January 2005. Applicant's wife has returned to Russia alone for visits in 1995, 2000, and 2002. The 2000 visit was occasioned by her grandmother's illness, while the others were planned vacations. Applicant went with his wife to Russia to stay with and visit her relatives from July 25, 2001 until August 17, 2001.

Neither Applicant nor his wife own any property in Russia. However, his parents-in-law own an apartment that his wife will most likely inherit a one-third ownership of when her parents die. Applicant and his wife do not intend to retain any interest in the property if they do inherit it. They do

not provide support for anyone in Russia, and gift exchanges are minor.

Applicant's wife maintains weekly telephone contact with her parents. She occasionally exchanges e-mails with her sister. Neither Applicant nor his wife have any plans on traveling to Russia in the near future.

Applicant submitted the testimony of his pastor, work supervisor, a co-worker, and a friend since his boyhood days. Their testimony establishes that Applicant is considered to be loyal, dependable, honest, conscientious, and trustworthy. He is a hard working and knowledgeable designer. To a person, they believe that Applicant is not susceptible to succumbing to pressure or coercion.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its DC and MC, is most relevant in this case.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(11)</sup>

## CONCLUSIONS

**Foreign Influence.** 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.

Based upon the allegations in the SOR, Disqualifying Condition (DC) 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* and DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B:

DC 1 and 2 both apply in this case because Applicant is married to and resides with a Russian citizen. His mother-in-law, father-in-law, and two sisters-in-law are citizens and residents of Russia. His wife's frequent telephone contact with her parents, his and her travel to Russia, and her mother and sisters-in-law travel to the U.S., demonstrate the close ties of affection she has with those individuals and Applicant's vicarious obligation to them. His own ties of love and affection for his wife expose him to the potential for adverse influence or duress.

Once the government meets its burden of proving controverted facts<sup>(12)</sup> the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.<sup>(13)</sup> Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>(14)</sup>

The following Mitigating Conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B: MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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;* and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

There is no evidence to permit finding that Applicant, his wife, and his in-laws are not in a position to be exploited by Russia. Her family members are citizens and residents of Russia, she has traveled there alone as recently as 2002, and with Applicant as recently as 2001, and her mother was on an extended visit in the U.S. at the time of the hearing. Although they have no immediate plans to visit Russia, based upon the past travel history it is reasonable to expect that at least Applicant's wife, and quite likely his son, will travel to Russia in the future. Their presence in Russia places them in the position to be exploited by the Russian government.

In considering the possibility of exploitation by the Russian government it would be foolhardy to ignore the history of espionage committed against the U.S. by the Soviet Union and Russia that continued long after the downfall of the Soviet Union, as evidenced by the arrest of an FBI agent in

2001 as he attempted to pass classified documents to Russian agents, and the information contained in GE 3-7. MC 1 is inapplicable in this case.

As discussed above, Applicant's wife's contacts with her parents are clearly indicative of the continuing close relationship she has with them. Her sister's travels to the U.S. and her visits with them in Russia exhibit a similar close relationship. Her contact is neither casual nor infrequent, and, accordingly, MC 3 does not apply.

Security clearance eligibility decisions are determinations in terms of the national interest,

and are in no sense a determination of the loyalty of the applicant. There is no reason to question Applicant's loyalty to the United States or his wife's stated intention to become a U.S. citizen. However, in all adjudications the protection of our national security is the paramount concern, and the ultimate question to be answered is whether it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I am unable to conclude that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: 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. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Directive, Additional Procedural Guidance, Item E3.1.14
13. Directive, Additional Procedural Guidance, Item E3.1.15
14. ISCR Case No. 99-0597 (December 13, 2000)