

DATE: June 6, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27444

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

Thomas A. Vesey, Esq.

**SYNOPSIS**

Applicant had the burden to show that his ties with his wife's family in Russia do not pose a security risk. He did not meet his burden. Clearance is denied.

**STATEMENT OF THE CASE**

On November 27, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on December 10, 2002. The case was assigned to the undersigned on January 15, 2003. Notices of Hearing were issued on March 3 and March 17, 2003, and the hearing was held on April 7, 2003. The transcript was received on April 21, 2003.

**FINDINGS OF FACT**

Applicant is a 42 year old native born United States citizen. He is the President of a defense contractor.

In 1994, applicant traveled to Russia to investigate the possibility of setting up a joint venture with a Russian company that, among other things, produced products for the Russian Navy. During the trip, applicant became acquainted with the daughter of the Russian naval officer who was the "military liaison overseeing production for the (Russian) Navy" (TR at 29).

Applicant was invited to return to Russia to give a three day presentation at a Russian university. He accepted the invitation and returned to Russia in February 1995. At applicant's request, the daughter of the Russian naval officer

acted as his interpreter during this trip.

In June 1995 applicant returned to Russia and married the daughter of the Russian naval officer. In early 1996, he returned to Russia to pick up his wife and bring her back to the United States.

Applicant's wife has lived in the United States since 1996. Since moving to the United States, she has visited her family in Russia three times. Although she is eligible to apply for United States citizenship, to date she has not done so. She testified that she intends to apply for United States citizenship, and to remain in the United States permanently (TR at 42, 49).

When applicant's wife left for the United States after she and applicant married, her father lost his security clearance with the Russian Navy (Exhibit A; TR at 46). As a result, in 1996 he took early retirement from the Russian Navy and went to work for a private Russian company. The father-in-law visited applicant and his wife in the United States in February 2003.

In addition to his Russian father-in-law, applicant has a mother-in-law and sister-in-law who are citizens and residents of Russia. The mother-in-law and sister-in-law visited applicant and his wife in the United States in 1997 to help with the birth of their daughter. <sup>(1)</sup> The sister-in-law visited applicant and his wife a second time in 2000 or 2001. Applicant's wife telephones her parents in Russia "a couple of times a week" (TR at 43).

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and Conditions that could mitigate security concerns) which must be followed by

the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

### **Foreign Influence**

**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.

#### **Conditions that could raise a security concern:**

1. An immediate family member is a citizen or resident of a foreign country.
2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence exists.

#### **Conditions that could mitigate security concerns:**

None.

## **CONCLUSIONS**

In 1995, applicant traveled to Russia and married a Russian citizen. In 1996 he brought her to the United States. Although he and his wife testified that she intends to apply for United States citizenship, to date she has not done so.

At the time of their marriage, the wife's father was an officer in the Russian Navy. He was forced to accept early retirement from the Russian Navy because he lost his Russian security clearance when his daughter moved to the United States with applicant. Since retiring from the Russian Navy in 1996, applicant's father-in-law has worked for a private Russian company.

Applicant's wife maintains close ties with her parents and sister, all of whom are currently citizens and residents of Russia. Since applicant's wife moved to the United States, her parents have each made one visit to the United States, and her sister has visited the United States twice. Applicant's wife has visited her family in Russia three times since moving to the United States. The wife calls her parents in Russia a couple of times a week.

When applying the foregoing facts to the applicable guidelines, it is clear that the first disqualifying condition under the Foreign Influence guideline is applicable because applicant's wife, an immediate family member and a person to whom applicant has close ties of affection or obligation, is a citizen of Russia. The second disqualifying condition also applies because applicant's wife's close ties with her parents and sister give rise to the potential for adverse influence or duress to be exerted upon applicant's wife, and consequently upon applicant.

Although Russia is not as hostile to United States as the old Soviet Union was, it cannot be considered a "friendly" country, particularly in the context of intelligence gathering. It is a known fact that Russia operates an aggressive intelligence service that actively seeks access to United States secrets. Under the circumstances, applicant has the burden of persuasion to show that his ties with his wife's immediate family living in Russia do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002) at page 8.

Applicant failed to meet his burden. The evidence simply does not support the affirmative finding that applicant's wife is not in a position to be exploited by Russia in a way that could force applicant to choose between loyalty to his wife and loyalty to the United States. <sup>(2)</sup> Accordingly, Foreign Influence Mitigating Condition 1 does not apply to this case. Based on the foregoing, Guideline B is found against applicant.

### **FORMAL FINDINGS**

#### **GUIDELINE B: AGAINST THE APPLICANT**

### **DECISION**

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

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Joseph Testan

Administrative Judge

1. Applicant's daughter is a United States citizen.

2. I have considered applicant's testimony that he would report to the authorities any attempt to pressure him to do something against the interests of the United States (TR 16-17). This testimony, regardless of how sincere it may be, is not entitled to much weight. ISCR Case No. 00-0484 (February 1, 2002) at page 6.