

KEYWORD: Foreign Influence; Financial

DIGEST: Applicant's wife and stepson are citizens of Russia. His parents-in-law are Russian citizen residents. He has an \$86,000 delinquent tax debt to the IRS and approximately \$60,000 in other delinquent debts on which he is not making any payments. Applicant failed to mitigate foreign influence and financial consideration security concerns. Clearance is denied.

CASE NO: 02-26976.h1

DATE: 05/06/2004

DATE: May 6, 2004

In re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-26976

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's wife and stepson are citizens of Russia. His parents-in-law are Russian citizen residents. He has an \$86,000 delinquent tax debt to the IRS and approximately \$60,000 in other delinquent debts on which he is not making any payments. Applicant failed to mitigate foreign influence and financial consideration security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 30 September 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 15 November 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 5 March 2004. On 17 March 2004, ⁽²⁾ I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 25 March 2004.

I left the record open so that Applicant could provide documentation of his attempts to resolve his debts. With no objection from the Government, I admitted the two documents he submitted-a letter from the IRS (Ex. A) and a credit report (Ex. B).

FINDINGS OF FACT

Applicant is a 51-year-old senior software systems engineer. Tr. 20. He has two master's degrees and a Ph.D. in engineering. Tr. 19. Applicant was married to his first wife from 1983-95. She had a pen pal in Russia. In 1992, Applicant and his wife visited Russia to see the pen pal. Tr. 17. Applicant found Russia to be very interesting. Tr. 18. It was the first of 11 trips he made there. Tr. 37.

In 1995, Applicant and his first wife divorced. Ex. 1 at 4. Since his divorce, Applicant has traveled to Russia on eight occasions. Ex. 1 at 7. He met his current wife through an internet dating service. She is a Russian citizen. Ex. 2 at 4. Applicant made his last trip to Russia in July 2000 to bring his then fiancée to the U.S. Tr. 37. They married in September 2000. Ex. 1 at 4. The first few months of the relationship was stormy. Apparently Applicant's wife, who is about 22 years younger than Applicant, expected the U.S. to be "the land of milk and honey" and wanted to go out and party after he came home from work tired. Tr. 32. Police were called to the house on at least two occasions. Applicant moved his wife out of the house, but she returned the next day and tried to break in with a hammer. Tr. 18. Applicant called the police who arrested his wife. The couple separated in December 2000, and Applicant decided to file for divorce. *Id.* After counseling, the couple got back together in March 2001.

Applicant's wife's son is also a Russian citizen. He is almost 7 years old. Answer; Ex. 1 at 5. He lives with his mother and Applicant in the U.S. and has no contact with his biological father. Applicant's parents-in-law are resident citizens of Russia. Answer.

Applicant has a friend who is a resident citizen of Russia. Although they are more friends than business associates, Applicant and his Russian friend operated a business together for a short period. Applicant acted as a go-between to facilitate the outsourcing of computer programming work from the U.S. to his friend in Russia. He has contact with this friend about twice a year. Tr. 34-36; Answer.

In 1995, when Applicant divorced his first wife, they were each making about \$60,000 a year. Applicant asserts that he was left with considerable bills because of the divorce.

In 2000 and 2001, Applicant incurred tax debts to the IRS totaling approximately \$84,000. Tr. 20-21. Applicant claims the debt was incurred as a result of his exercise of stock options at a company for which he worked. Although Applicant was making about \$86,000 a year in salary, he failed to pay the taxes on his stock options at the time. When the stock declined in value from about \$60 a share to 21¢ a share, Applicant was unable to finance the tax bill. To further aggravate the situation, Applicant was laid off from his job in April 2001, a month after reconciling with his wife. Applicant retained the services of tax consultants to negotiate a settlement of his tax debt. On 9 March 2004, the IRS offered to settle the consolidated debt from tax years 2000 and 2001 for approximately \$46,000, but required Applicant to accept the offer by 17 March.

The following chart summarizes the status of the non-tax-related financial delinquencies listed in SOR ¶ 2.

¶	Nature and Amount	Status	Record
2.c.	Collection service for Bank debt \$27,687	Unpaid	Ans; Tr. 24
2.d.	Collection agency \$2,749	Pays \$75 @ month	Tr. 25
2.e.	Financial services for bank debt \$6,010	Pays \$159 @ month	Tr. 26
2.f.	Collection agency for Bank debt \$10,504	Unpaid	Tr. 26
2.g.	Collection agency for Bank debt \$6,172	Unpaid	Tr. 28
2.h.	Collection on credit card debt \$3,863	Unpaid	Tr. 28
2.i.	Collection on credit card debt \$13,530	Unpaid	Tr. 29

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to

rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's wife (¶ 1.a.) and stepson (¶ 1.b.) are citizens of Russia residing in the U.S.; he has contact with his parents-in-law about once every three months (¶ 1.c.), he has a friend who is a resident citizen of Russia (¶ 1.d.); and he has traveled to Russia at least eight times since 1995 (¶ 1.e.). A security risk may exist when an applicant's immediate family, or other person to whom he 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. Directive ¶ E2.A2.1.1.

Applicant asserts he is a loyal American citizen who would not betray the U.S. Tr. 19. The Government has not alleged, and the evidence does not show, Applicant is anything but a loyal U.S. citizen. However, the issue is not his loyalty, but whether he is *vulnerable* to foreign influence that could result in the compromise of classified information.

In evaluating an applicant's foreign associates, it is appropriate to consider the significance of the applicant's spouse's ties to foreign countries. ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002). There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members. ISCR Case No. 01-26893, 2002 DOHA LEXIS 505 at *8 (App. Bd. Feb. 20, 2002).

Applicant admitted each of the factual allegations in the SOR. Applicant has immediate family members-his wife and stepson-who are citizens of a foreign country. DC E2.A2.1.2.1. The evidence also established Applicant has close ties of affection or obligation, through his wife, to his in-laws, who are citizen residents of Russia. DC E2.A2.1.2.1. Although Applicant has ties of affection for his Russian friend, they do not appear to be close ties. I find for Applicant on ¶ 1.d.

It is a mitigating condition if the foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associate and loyalty to the U.S. MC E2.A2.1.3.1. In analyzing whether a foreign associate is in a position of vulnerability, it is necessary to assess

the nature of the foreign country. It is common knowledge that, although not as hostile to the U.S. as the Soviet Union was, Russia continues to operate an aggressive intelligence service that actively seeks access to U.S. secrets. ISCR Case No. 02-27444, 2003 DOHA LEXIS 448 at *6 (Testan, A.J. Jun. 6, 2003). Russia has assisted the U.S. in mediating international conflicts. While its human rights record has improved, it is still uneven.⁽³⁾ Applicant failed to demonstrate his in-laws were not in a position to be exploited by a foreign power.

After carefully examining all of the evidence, I conclude Applicant failed to mitigate the foreign influence security concerns attributable to his wife and his in-laws. As Applicant's stepson is only seven, and has lived most of his life in the U.S., I find he does not represent a security concern. As Applicant has not visited Russia in several years, I find his past travels do not raise a security concern. I find for Applicant on ¶¶ 1.b. and 1.e.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had delinquent debts to the IRS for tax years 2000 (¶ 2.a.) and 2001 (¶ 2.b.) and other delinquent accounts that had been charged off by the creditors (¶¶ 2.c.-2.i.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government has established by substantial evidence and Applicant's admissions that he has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Applicant alleged some of the debts resulted from conditions largely beyond his control-his divorce in 1995 and being unemployed for approximately eight months in 2001. MC E2.A6.1.3.3. I find this mitigating condition inapplicable to Applicant's case because he did not act responsibly with regard to these debts. He made eight trips to Russia from 1995-2000 and drove a vehicle on which he was making monthly payments exceeding \$1,100.

Applicant made a good-faith effort to repay some of his creditors and resolve others through negotiation and compromise. MC E2.A6.1.3.6. But Applicant still has several delinquent debts which he is neither paying nor has a plan to resolve. Although the IRS agreed to compromise his tax delinquencies for \$46,000, there is no evidence Applicant has agreed to that offer. Under the circumstances, Applicant has not mitigated his adverse financial condition. I find against Applicant on ¶¶ 2.a.-2c. and 2.f.-2.i.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.i.: Against Applicant

DECISION

In light of all of 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.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
2. Although the official notice of hearing was dated 5 March 2004, Applicant agreed to the hearing date and that he had received fair notice of the hearing. Tr. 6.
3. Although I was not asked to take administrative or official notice, these facts are known to this agency through its cumulative expertise in deciding security-clearance cases involving foreign influence or foreign preference. *See* ISCR Case No. 99-0452 at 4 (App. Bd. Mar. 21, 2000); Gary J. Edles and Jerome Nelson, *Federal Regulatory Process: Agency Practices and Procedures* § 6.9 (1995).