

DATE: June 18, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29665

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant married a woman whose parents are still citizen residents of Russia. Applicant failed to mitigate the resulting foreign influence 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 24 January 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 3 and 20 February 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 22 March 2004. On 13 April 2004, 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 21 April 2004.

FINDINGS OF FACT

Applicant is a 44-year-old network systems administrator for a defense contractor on a U.S. military installation. Ex. 1 at 1, 2. He served in the U.S. Army Reserve from 1988-96. Ex. 1 at 6. His family, supervisors, and coworkers report Applicant is an honorable man with a superior work ethic who poses no threat to national security. Exs. H-L. He is thoroughly versed in the procedures for notifying security officials should any attempt be made to acquire classified information from him. Tr. 31.

Applicant is married to S, a native of the Russian Federation. They met in 1997 when she was visiting friends in the U.S. In May 1998, S came to the U.S. on a fiancée visa. She brought her 10-year-old son, V, with her. Applicant and S married on 1 August 1998. Ex. 2 at 3; Ex. C at 8. S and V received their alien registration cards in November 1998. In November 2003, S applied for U.S. citizenship. She will surrender her Russian passport when she becomes a U.S. citizen. Ex. 2 at 3. Applicant and S have a 14-month-old child born in the U.S.

Applicant's parents-in-law are citizen residents of Russia. His mother-in-law is a retired pediatrician. His father-in-law is a retired attorney who worked as a state prosecutor for 30 years. He served in the Soviet Army from 1953-56, but not in any intelligence agency. As a condition of his employment, he was a member of the Communist Party until 1991 when the Soviet Union dissolved and the Russian Federation was established.

Applicant's in-laws lead a quiet life in retirement. They are not active politically and are not agents of a foreign government. Their only other child died in an aircraft accident a decade ago. They visit the U.S. on occasion to spend time with their daughter and their two grandsons. At the time of the hearing, they had been staying with Applicant for three months. S's parents live comfortably on their government pensions. Applicant and his wife neither provide support to, or receive support from, her parents or her ex-husband. Tr. 43-44. Except for the possibility of S inheriting her parents' apartment, worth about \$5,000, neither Applicant nor his wife have any foreign financial interests. When her parents are in Russia, S speaks to them by telephone weekly and correspond three to four times a year. Since coming to the U.S., S and V have visited her parents in Russia on three occasions: January 1999 for three weeks; June 2001 for six weeks; and July 2003 for one month. Ex. C at 10.

V's father is a citizen resident of Russia. He speaks with V by telephone approximately once a month. Ex. 2 at 3. S maintains friendships with several women living in the U.S. who were born in the Soviet Union. They are not Applicant's friends.

Applicant has never had a passport or visited Russia. Tr. 28. He has no plans to visit Russia in the future. Tr. 36. He is unable to communicate with his in-laws or V's father because they do not speak English and he does not speak Russian.

Before immigrating to the U.S., S was an English language instructor at a state university in Russia. Ex. C at 7. The Office of Personnel Management performed a background investigation on S so she could be certified as a contract language instructor at a U.S. military installation. Ex. C; Tr. 32, 47. The background investigation was satisfactory, and she got the job.

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

In the SOR, DOHA alleged Applicant's spouse (¶ 1.a.) and stepson (¶ 1.b.) are citizens of Russia; his in-laws (¶ 1.d.) and stepson's father (¶ 1.c.) are citizen residents of Russia; his wife maintains weekly telephone contact with her parents in Russia (¶ 1.e.); his wife and stepson traveled to Russia in 1999 and 2000 to visit family members (¶ 1. f.); his in-laws resided with him from October 2000-January 2001 (¶ 1.g.); and he maintains close contact with Russian citizens residing in the U.S. (¶ 1.h.). 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, except that he maintains close contact with Russian citizens residing in the U.S. (¶ 1.h.). It is his wife who has friends in the U.S. who are Russian citizens. 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.

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 appropriate 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).⁽²⁾ Russia has assisted the U.S. in mediating international conflicts and is an ally in the war on terrorism. While its human rights record has improved since the demise of the Soviet union, violence and human rights abuses are again on the rise. Ex. 3 at 6. Ex. 5 at 4.

Applicant's wife and stepson clearly have close bonds of affection with her parents-her parents visit regularly for several months, S has returned to Russia for lengthy stays three times since 1999, and she telephones her parents weekly when they are back in Russia. Applicant has close ties of affection for his wife and children. This is all normal and appropriate. But it places Applicant in the position of having ties of obligation to his in-laws because of his affection for his wife and children. The greater the ties of affection, influence, or obligation, the greater the chance that these ties might be exploited to the detriment of the United States. Applicant was unable to mitigate the security concerns raised by his association with foreign citizens.

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.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For 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 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).