

DATE: November 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30073

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a natural born United States citizen, married a Russian woman in November 2000 whom he met through an internet dating service. His wife is still a Russian citizen, although she has applied for United States citizenship. Her mother, father, and two sisters are citizens and residents of Russia. Her father retired from the Russian military at the rank of major within the past five years. Applicant has failed to mitigate the foreign influence security concern that exists in this case. Clearance is denied.

STATEMENT OF THE CASE

On November 7, 2003, 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. [\(U\)](#) 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 that was received by DOHA on November 24, 2003, and requested a hearing. In his response, Applicant admitted all SOR allegations.

The case was assigned to me on July 15, 2004. A notice of hearing was issued on August 26, 2004, scheduling the hearing for September 13, 2004. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7. GE 1& 2 were admitted into the record and administrative notice was taken of the information contained in GE 3-6 without an objection. Applicant's objection to administrative notice being taken of GE 7 was sustained. Applicant testified, called his wife to testify on his behalf, and submitted 14 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-14. AE 2-14 were admitted into the record without an objection. Administrative notice was taken of AE 1 without an objection. The transcript was received on September 23, 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 29-year-old man who was employed by a defense contractor as a systems engineer from March 1999 to January 2004, at which time he changed jobs and began working for another defense contractor in a similar position. He graduated from college with a bachelor of science degree in physics in 1998.

Applicant began corresponding with his wife in approximately September 1999, after he obtained her name from an internet dating service. At the time, she was a Russian citizen, resided in the eastern Russian city of Khabarovsk, and was employed as an office manager for a joint venture, apparently between Russian and Korean entities, engaged in exporting ferns. She was a college graduate at the time, having obtained a bachelor's degree in international economics from a Russian school.

After corresponding with her by e-mail, and occasionally by telephone and letters, Applicant and his future wife agreed to meet in Moscow in March 2000. They both flew to that city and spent approximately two weeks together. He telephoned her about three weeks after his return to the United States and asked her to marry him. She traveled to the U.S. on a fiancée visa in September 2000, and they were married in November 2000.

Applicant's mother-in-law, father-in-law, and two sisters-in-law (ages 16 and 22) are citizens and residents of Russia. The mother, father, and younger sister reside in Khabarovsk, while the older sister recently moved to St. Petersburg. Applicant's father-in-law was a major in the Russian Army, stationed in Khabarovsk, and retired sometime after Applicant's wife relocated to the U.S. The father-in-law met and married Applicant's mother-in-law in the then East Germany, which is also where Applicant's wife was born. The family moved to Khabarovsk when Applicant's wife was three or four years old.

Applicant's mother-in-law is employed as a nurse and a hairdresser, while the father-in-law is apparently presently engaged in his own contracting business producing some sort of business form. Applicant's oldest sister-in-law recently married and works as a secretary. Her husband's employment is uncertain, although he may still be a college student. The youngest sister-in-law is still in high school.

Applicant's wife speaks with her mother and sisters by telephone on a weekly basis. She only speaks with her father about once a year because she considers him to be verbally abusive and an alcoholic. Applicant's wife visited her family in Russia for approximately two weeks in February 2002. Her mother came to the U.S. to visit in 2001, and her younger sister came to visit in the U.S. in 2002. She describes her relationship with her mother as "fairly close."

Applicant's wife attended a U.S. university, obtained a masters in business administration degree, and is presently employed by that university as a budget analyst. She has no financial interests in Russia, but, with Applicant, does own a house, two automobiles, and financial investments in the U.S. She has permanent resident alien status in the U.S., and has applied to become a U.S. citizen. She is pregnant with their first child.

Applicant was questioned by a Special Agent for the Defense Security Service about the possibility of foreign influence being exerted upon him through exploitation of his relationship with his wife on April 8, 2002 (GE 2), and provided the following information:

My wife is very close to her family in Russia, and I do feel that she is vulnerable if anyone attempts to do harm to her family. She would try her best to help them. I also feel that I could be subject to potential pressure or coercion if my wife's life was threatened. If a foreign government held my wife hostage, and threatened to harm her, I would do everything in my power to save her. If I were put in this type of situation regarding classified information, I would inform the proper United States Agency concerning the matter. I am loyal to the United States, but I am also loyal to my wife. My first objective in this type situation would be to have an outcome that is beneficial to both the United States and my wife.

He minimized the impact of his loyalty to his wife in his answer to the SOR and in his testimony asserting he would never succumb to blackmail or coercion. His wife likewise testified she would not succumb to such pressure.

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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

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

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, who is married to and resides with a Russian citizen, has a mother-in-law, father-in-law, and two sisters-in-law who are citizens and residents of Russia. His wife's frequent telephone contact with her mother and sisters, and their respective travels to Russia and the U.S. since the wife took up residence in 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 with his wife expose him to the potential for adverse influence or duress.

Once the government meets its burden of proving controverted facts⁽¹²⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹³⁾ Further, the government is under no duty to present evidence to disprove any 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.⁽¹⁴⁾

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.*

Applicant's father-in-law served on active duty in the Russian Army for approximately 22 years, and did not retire until after Applicant's wife entered the U.S. While Applicant and his wife are unclear on what exactly her father did in the Army, it is clear from his rank and her description of his duties that he was in a position of authority. While there is no evidence to suggest that the father-in-law is or was an agent of the Russian government engaged in espionage activities, there is also no evidence on which to base a finding that he is not an agent of the Russian government within the meaning of MC 1 based upon his military status.

Further, 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 that country, and she traveled to Russia as recently as 2002. Although she does not have any present plans to return to Russia to visit her family due to her pregnancy, she also has not ruled out the possibility of such travel. Their presence in Russia places them in the position to be exploited by the Russian government.

Finally, 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. MC 1 is inapplicable in this case.

As discussed above, Applicant's wife's contacts with her mother and sisters are clearly indicative of the continuing close relationship she has with them. Her contact with them is neither casual or 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. 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)