

DATE: November 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30535

**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 December 1997 whom he met through a travel agency dating service. He now resides with his wife and her 15-year-old son who are both still Russian citizens. His wife's mother and father 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 November 5, 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. <sup>(1)</sup> 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 26, 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 six documentary exhibits that were marked as Government Exhibits (GE) 1-6. GE 1 was admitted into the record and administrative notice was taken of the information contained in GE 2-6 without an objection. Applicant testified, called his wife to testify on his behalf, and submitted 11 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-11, and admitted into the record without an objection. The transcript was received on September 30, 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 50-year-old man who has been employed by a defense contractor as a senior member of the engineering

staff since May 2001. He was previously employed by a different defense contractor from January 1989 to May 2001 as a senior avionics system engineer. He graduated from college with a bachelor of science degree in engineering in 1988. Applicant was an active duty member of the U.S. Air Force from April 1973 to March 1977, and a member of the Army Reserve from November 1983 to January 1985. He attained the rank of senior airman (E-4) in the Air Force, and Sergeant (E-5) in the Army.

Applicant first married in October 1974, and that marriage ended in divorce in November 1993. He has two daughters from that marriage, ages 28 and 23. Applicant married his present wife on December 30, 1997. He resides with her and her son from a former marriage who is 15 years old.

Applicant began corresponding with his wife in 1997, after he obtained her name from a travel agency dating service. At the time, she was a Russian citizen, resided in the Russian city of St. Petersburg, and was employed as an office manager. She was a college graduate, and had previously worked as an engineer. She was widowed with one son. Her former husband had served in the Russian military repairing tanks, and was employed as an auto mechanic at the time of his death from cancer.

After corresponding with her by telephone and letters, and occasionally by e-mail, Applicant and his wife agreed to meet in Russia in September 1997. They spent approximately three weeks together in Russia, and, after his return to the United States, he arranged for her to visit with him in the U.S. She traveled to the U.S. by herself on a tourist visa in December 1997, and they were married on December 30, 1997. Her son joined her in the U.S. in February 1998, and they have lived together as a family since that time.

Applicant's mother-in-law and father-in-law are citizens and residents of Russia. Applicant's stepson's grandmother also is a citizen and resident of Russia. The mother and father reside in St. Petersburg, while the stepson's grandmother resides in an outlying village. Applicant's father-in-law served in the Russian Army for two years back in the late 1950s or early 1960s and was stationed in Germany. He is now 64 years old and is retired from his employment as an engineer for the city of St. Petersburg. Applicant's mother-in-law is a retired flower maker. Both her parents presently receive pensions. Applicant's wife has no siblings or in-laws, except for the mother, from her former marriage.

Applicant's wife speaks with her mother by telephone on an approximate monthly basis. Applicant returned with his wife to visit her family in Russia for approximately three weeks in 1999 and 2003. His wife has additionally returned with her son to visit her parents in 2001 and 2004. The son apparently stayed in Russia for a period of time without his mother in 2004 during which he visited with his paternal grandmother in addition to his maternal grandparents. The wife's parents came to the U.S. to visit shortly after she was married, and again in 2002.

Applicant's wife is not presently employed, although she was employed as a contractor performing tax work as recently as June 2004. She has no financial interests in Russia, but, with Applicant, does have financial interests in the U.S. She and her son have permanent resident alien status in the U.S.

Applicant submitted documentation that he diligently reported all travel to Russia to his employers. That documentation all attests to his reputation as a valued employee and loyal and trustworthy citizen. He avows he would never do anything disloyal to the U.S. His wife was somewhat unclear as to what she would do if efforts were made to exploit her relationship with her parents, but did indicate she would not succumb to any foreign influence that might be exerted.

## **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, who is married to and resides with two Russian citizens, also has a mother-in-law and father-in-law who are citizens and residents of Russia. His wife's frequent telephone contact with her mother, and his wife's and stepson's travel to Russia, and her parents travel to the U.S. since the wife took up residence in the U.S., demonstrate the close ties of affection she and her son have with those individuals and Applicant's vicarious obligation to them. His own ties of love and affection for his wife and stepson 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, stepson, 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 and her son have traveled to Russia as recently as the summer of 2004. Applicant himself has traveled to Russia as recently as 2003. Based upon the

past travel history it is reasonable to expect that all three will likely 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. MC 1 is inapplicable in this case.

As discussed above, Applicant's wife's contacts with her mother are clearly indicative of the continuing close relationship she has with her. 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. 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

### **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)