

DATE: November 21, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20523

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an engineer working for a defense contractor. Applicant's wife is a Russian citizen who recently obtained her "green card" in the United States. His spouse's parents and brother live in Russia, and she maintains frequent contact with them. Applicant could not mitigate the foreign influence concern. Clearance is denied.

STATEMENT OF THE CASE

On July 9, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, notarized on July 24, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned me on September 12, 2003. A Notice of Hearing was issued on September 22, 2003, setting the hearing for October 2, 2003. An amended Notice of Hearing was issued on September 30, 2003, setting a new location for the hearing. On October 2, 2003, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented four exhibits which were admitted into evidence. Applicant appeared and testified, and offered five exhibits into evidence, including a video tape of his trip to visit his wife's relatives in Russia. Applicant also waived the fifteen day notice period. I received the transcript (Tr.) of the hearing on October 15, 2003.

FINDINGS OF FACT

Applicant admitted all of the allegations contained in the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 36 years old. He is an electrical engineer employed by a defense contractor. Applicant is married to a Russian citizen, and they have one child. Applicant's spouse applied for and received this year her "green card", her permanent resident card, which expires on August 6, 2013. Applicant has a son who is three years old. (Tr. 13-20)

Applicant met his wife after she came to the United States to study mathematics, to teach it as a graduate assistant, and at the same time work on her Ph.D. in theoretical mathematics. Applicant's wife has a masters degree and Ph.D. in practical mathematics from Moscow State University. Applicant's spouse came to the United States on August 17, 1996. His wife entered the United States on a student visa. She worked as a mathematics teaching assistant while getting here degree, and wants to teach on the college level and become a tenured professor. She wants to become an American citizen some day. Applicant met and married his wife about four years ago. She returned to Russia to visit her parents and brother between May and June 1997, May and June 1998, May and June 2000, and July and August, 2003. It was during this latest trip that a video tape of the visit with the spouse's family was made by Applicant (Exhibits A, D, E, F, and G; Tr. 20, 35-38).

The video tape shows Applicant's spouse's family lives in a two story house in the countryside in a Russian town of 20,000 in population north of Volgograd (formerly Stalingrad). The house is of simple construction and has no indoor bathroom facilities, and water must be pumped by hand from a well for drinking and other uses. The house does have electricity. The house contains five rooms, and no attached garage. The spouse's parents are retired and own one car. Applicant's brother-in-law owns his own car, and works for a Russian privately-owned oil company, building pipelines in Algeria, at present, and possibly Iraq if his employers obtain a contract. Applicant's father-in-law was a civil engineer who built dams and other public construction projects until his retirement several years ago. Neither the father-in-law nor the mother-in-law were members of the communist party. Applicant's wife and her brother were not members of the communist party. The parents and their son are Russian citizens, residing in Russia. (Exhibits A, B, D, E, F, G; Tr. 22, 30, 33, 34, 49 to 68, 71)

Applicant's mother-in-law came to the United States three years ago and stayed with Applicant and his wife when their son was born, to provide help to his wife with the new baby. The mother-in-law stayed for 18 months, from October 2000 to March 2002. (Tr. 53, 77)

Applicant's spouse telephones her parents several times per week She mails letters to her parents periodically. She speaks with her brother by telephone monthly. Applicant's wife has a close relationship with her family.(Tr. 48, 69, 75, 83)

Applicant was introduced to his future wife by some friends in the Russian immigrant community in his home town. Applicant's wife speaks to their son in Russian at times, and wants the son to learn English and Russian. (Tr. 40, 41, 86)

There were two mistakes on Applicant's security clearance application (SCA). The first states his wife was born in the United States and not Russia. The second mistake was the date of his wedding. Both erroneous answers were in response to Question 8. (Tr. 79, 88, 89)

Applicant's wife could inherit part of the property her parents own in Russia. The property consists of the land with the two houses on it where Applicant visited in 2003. Applicant's brother-in-law served the mandatory two years in the Russian army as a paratrooper. (Tr. 68, 80)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE B: 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. 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.

Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (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. Directive, ¶ E2.A2.1.2.1.
- (2) Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. Directive, ¶ E2.A2.1.2.2.
- (3) Relatives, cohabitants, or associates who are connected with any foreign government. Directive, ¶ E2.A2.1.2.3.

Conditions that could mitigate security concerns include:

- (1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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. Directive, ¶ E2.A2.1.3.1.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

The SOR alleged Applicant's wife is a Russian citizen, his parents-in-law are Russian citizens residing in Russia, his brother-in-law is a Russian citizen residing in Russia, and Applicant planned to visit Russia in 2003. The Government proved all of these allegations. Disqualifying Conditions (DC) 1, 2, and 3 apply. Applicant is in a position where he may be vulnerable to foreign influence. In addition, Applicant's mother-in-law lived with him for 18 months in 2000 through March 2002, which further supports DC 2.

The Mitigating Condition (MC) 1 cannot be applied here because Applicant's wife's relatives could be exploited by the Russian government on an economic basis. Applicant's in-laws depend on a government pension to live, and his brother-in-law works for a company which builds pipelines in the middle east. His income depends on what business the company can generate and profits made. Therefore, the finding is against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

DECISION

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

Philip S. Howe

Administrative Judge