

KEYWORD: Foreign Influence

DIGEST: Applicant is a computer software engineer for a defense contractor. She was born in Russia and received her undergraduate education there. Applicant married a United States citizen, became a United States citizen, and resides in the United States with her husband and child. Her father and brother are citizens of and reside in Ukraine. She talks to them infrequently by phone and last saw them on a trip in July 2003. Another brother is a citizen of and resides in Russia. She last saw him in July 2003 but speaks to him monthly by phone because she is assisting him to enter the United States. Her mother, a Russian citizen but a United States permanent resident alien, resides with Applicant in the United States. Applicant has mitigated security concerns for foreign influence based on immediate family members. Clearance is granted.

CASENO: 03-19097.h1

DATE: 04/29/2005

DATE: April 29, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19097

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

## **FOR GOVERNMENT**

Sabrina Elaine Redd, Esq., Department Counsel

## **FOR APPLICANT**

Lori S. Patterson, Esquire

## **SYNOPSIS**

Applicant is a computer software engineer for a defense contractor. She was born in Russia and received her undergraduate education there. Applicant married a United States citizen, became a United States citizen, and resides in the United States with her husband and child. Her father and brother are citizens of and reside in Ukraine. She talks to them infrequently by phone and last saw them on a trip in July 2003. Another brother is a citizen of and resides in Russia. She last saw him in July 2003 but speaks to him monthly by phone because she is assisting him to enter the United States. Her mother, a Russian citizen but a United States permanent resident alien, resides with Applicant in the United States. Applicant has mitigated security concerns for foreign influence based on immediate family members. Clearance is granted.

## **STATEMENT OF THE CASE**

On May 13, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive. Applicant acknowledged receipt of the SOR on May 21, 2004.

Applicant answered the SOR in writing on May 24, 2004. She admitted with explanation all of the allegations under Guideline B. She elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 30, 2004. Applicant received a complete file of relevant material (FORM) on December 17, 2004, and provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely responded through counsel on March 15, 2005, submitting material to mitigate the security concerns. Department Counsel had no objection to Applicant's response to the FORM and the case was assigned to me on April 7, 2005.

## FINDINGS OF FACT

Applicant is a 37-year-old software engineer for a defense contractor. She was born in Russia and received her bachelor's degree from an university in Russia. She married a Russian citizen but they divorced and she does not have contact with him. Applicant married a United States citizen in 1994, emigrated to the United States in 1995, and became a United States citizen in 1996. She resides in the United States with her husband and a daughter born in 1998, and is expecting her second child. She received a master's degree in information technology from a United States university in 2001. She is active in her local church. Applicant visited Russia and Ukraine on short trips in 2000 and 2003. <sup>(1)</sup>

Applicant's father was born in Russia but is a resident and citizen of Ukraine. He is elderly and in poor health resulting from an accident in 1993. Her father has never been to the United States and she last saw him on a visit to Ukraine in 2003. Her father does not have a telephone at home and she spoke to him only once by phone in five years. Her father never worked for Ukraine or Russian governments or been in the military of either country. <sup>(2)</sup>

Applicant's oldest brother was born in Russia and is a citizen and resident of Ukraine. She last saw him on a visit to Ukraine in 2003 and speaks to him by telephone two or three times a year. Her brother has never worked for the Russian or Ukraine governments or served in the military of Ukraine or Russia. He has never been to the United States. <sup>(3)</sup>

Applicant's other brother was born in Russia and is a resident and citizen of Russia. He is married with one child and manages a drug store. Applicant last saw her brother on a visit to Russia in July 2003, and speaks to him by telephone approximately monthly. This brother has applied for alien relative entry into the United States and Applicant is assisting him which is the reason for the telephone calls. <sup>(4)</sup>

Applicant's sister was born in Russia but resides in the United States with her husband and child, both United States citizens. Applicant's sister became a United States citizen in October 2004, after the SOR was issued. Applicant's mother was born in Russia and is a Russian citizen residing in the United States with Applicant. The mother is a United States permanent resident alien with an application for United States citizenship pending. <sup>(5)</sup>

Applicant has no financial or property interests in Russia or Ukraine. She does own property and has financial interests with her husband in the United States. Applicant provides no financial support to her father and brothers in Ukraine and Russia. She also does not provide any financial support to her mother and sister in the United States. <sup>(6)</sup> Applicant presented two affidavits from her work supervisor and a church colleague attesting to her good character, work ethic, and loyalty to the United States. <sup>(7)</sup>

Russia is not as hostile to the United States as its predecessor the former Soviet Union. While Russia and the United States do not agree on all foreign policy issues, Russia has assisted the United States in mediating international conflicts and is an ally in the war on terrorism. The Russian human rights record has improved, but violence and human rights abuses are starting to rise. Russia continues to operate an aggressive intelligence service that actively seeks access to United States secrets. Russia cannot be considered a "friendly" country, particularly in intelligence gathering.<sup>(8)</sup> Since the dissolution of the Soviet Union, there is no indication Russia has attempted to exploit residents of Russia for the purpose of compromising a security clearance holder in the United States.

The relationship between Ukraine and the United States have improved since the dissolution of the Soviet Union in December 1991. The United States has a continuing partnership with Ukraine on economic matters and attaches great importance to the success of Ukraine's transition to a democratic state with a flourishing market economy. The United States wants to see Ukraine develop as a stable, independent, democratic, economically prosperous country with close ties to Europe and Euro-Atlantic institutions. Ukraine's human rights record reflects significant problems and its application of the rule of law may be arbitrary. Ukraine is moving towards membership in the North Atlantic Treaty Organization (NATO) and the European Union (EU). Ukraine agreed to nuclear non-proliferation and cooperates with the United States in the war on terrorism. Ukraine assisted the United States by contributing one of the largest contingents of troops to the Iraq war effort.<sup>(9)</sup> There are no indications that Ukraine has ever attempted to exploit any resident of Ukraine for the purpose of compromising clearance holders in the United States.

## **POLICIES**

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."<sup>(10)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>(11)</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(12)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence.<sup>(13)</sup>

A person granted access to classified information enters into a special relationship with the government. The

government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(14)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(15)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(16)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(17)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(18)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(19)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B - A security concern may exist when an individual's immediate family, including co-habitants, and other persons he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. The situation could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline B. Applicant's father and brother in Ukraine, brother in Russia,

and her Russian citizen mother in the United States brings this matter under Foreign Influence Disqualifying Condition Directive ¶ E2.A2.1.2.1 (*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*).<sup>(20)</sup> An immediate family member includes spouse, father, mother, sons, daughters, brothers, sisters.<sup>(21)</sup> Applicant's sister is now a United States citizen and not in the category of persons covered by the disqualifying condition. Applicant's mother, father, and brothers are immediate family members within the meaning of the disqualifying condition. Her father and brothers are citizens of and reside in either Russia or Ukraine. Even though the mother resides in the United States, she is a citizen of a foreign country. I conclude the disqualifying condition has been established as to Applicant's mother, father, and brothers.

The Foreign Influence Mitigating Conditions that must be evaluated for Applicant are Directive ¶ E2.A2.1.3.1 (*a determination that the immediate family members 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 or the United States*); and Directive ¶ E2.A2.1.3.3 (*contact and correspondence with foreign citizens are casual and infrequent*). While intelligence gathering is not as pervasive as it was under the Soviet Union, Russia does target the United States for intelligence purposes. There is no indication Ukraine is targeting the United States for intelligence gathering, but there is a possibility of intelligence gathering. The United States government does not have to wait until there is specific proof of targeting of its citizens either by Russia or Ukraine for there to be a security concern. If it was in their best interest, Russia and Ukraine could and would target its citizens in Russia or Ukraine to obtain information from people in the United States. This potential for intelligence gathering places a heavy burden on Applicant to demonstrate the immediate family members do not pose a security risk and Applicant is not in a position to be forced to chose between loyalty to the United States and the immediate family members.<sup>(22)</sup> Applicant assert she is a loyal American citizen who would not betray the United States. The government has not alleged, and the evidence does not show, Applicant is anything but a loyal United States citizen. However, the issue is not her loyalty, but whether she is vulnerable to foreign influence that could result in the compromise of classified information.<sup>(23)</sup>

Applicant met her heavy burden to establish she is not vulnerable to foreign influence from her family members that would force her to chose between her loyalty to the United States or her immediate family members. Applicant's mother, as a permanent resident alien residing with Applicant in the United States, is not in a position to be exploited by a foreign power. There is no evidence Applicant's father and brothers are agents of a foreign power. Applicant has strong family ties to her United States citizen husband and daughter, and she is expecting another child. She obtained her United States citizenship and passport as soon as she could. Her contacts with her father are almost non-existent. Her contacts and relationship with her brother in Ukraine are limited to a short visit and infrequent telephone calls. This level of contact is casual and infrequent. While Applicant has more contact with her brother in Russia, the contact is mainly to sponsor her brother's entry into the United States. The contacts and relationships with her father and brothers do not show a degree of affection that could be exploited by a foreign power, like Russia and Ukraine with their present favorable relationship with the United States, to force her to chose between her loyalty to the United States and her father and brothers. I conclude Applicant has mitigated security concerns for foreign influence

I carefully considered all of the circumstances in light of the "whole person" concept for a fair, impartial, and commonsense decision. I conclude Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

### **DECISION**

In light of all of the circumstances presented in the record of this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. FORM Item 4 (Security clearance application, dated Jan. 24, 2003); Applicant's answer to the FORM, dated Mar. 16, 2005, at 2.
2. Applicant's answer to the FORM, dated Mar. 16, 2005, at 4.
3. *Id.*
4. *Id.*, at 5.
5. *Id.*
6. *Id.*, at 6.
7. *Id.*, at Exhibit B and Exhibit C.
8. FORM, Item 5 (U.S. Department of State, Background Note: Russia, dated October 2004); and Item 8 (Intelligence Threat Handbook, Section 3, dated May 8, 2003).
9. FORM, Item 10 (US Department of State, Ukraine's Future and U.S. Interests, dated May 12, 2004).
10. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

11. Directive ¶ E2.2.1.
12. *Id.*
13. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
14. *See* Exec. Or. 10865 § 7.
15. Directive ¶ E3.1.14.
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
18. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
19. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
20. I have not considered Foreign Influence Disqualifying Condition ¶ E2.A2.1.2.1 (*sharing living quarters with a person or persons, regardless of their citizenship state, if the potential for adverse foreign influence or duress exists*). The disqualifying factors concerning the mother are the same for this disqualifying condition as well as Directive ¶ E2.A2.1.2.2.
21. Directive ¶ E2.A2.1.3.1.
22. ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002) at 8.
23. Applicant's answer to FORM, dated Mar. 16, 2005, at Exhibit A.