

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Russia, emigrated to the United States in 1994, and became a U.S. citizen in 2002. Applicant's mother and cousin are citizens and residents of Russia. Applicant is close to her mother and maintains regular contact. Her mother is awaiting her visa to immigrate to this country. Applicant's mother-in-law is a citizen of Russia, but lives permanently in the U.S. and is applying for U.S. citizenship. Applicant's extensive bonds with the U.S. mitigate the security concerns arising from having relatives who are citizens or residents of Russia. Applicant's eligibility for assignment to a sensitive position is granted.

CASENO: 03-21205.h1

DATE: 02/08/2005

DATE: February 8, 2005

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 03-21205

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

Anna Ursano, Esq.

**SYNOPSIS**

Applicant was born in Russia, emigrated to the United States in 1994, and became a U.S. citizen in 2002. Applicant's mother and cousin are citizens and residents of Russia. Applicant is close to her mother and maintains regular contact. Her mother is awaiting her visa to immigrate to this country. Applicant's mother-in-law is a citizen of Russia, but lives permanently in the U.S. and is applying for U.S. citizenship. Applicant's extensive bonds with the U.S. mitigate the security concerns arising from having relatives who are citizens or residents of Russia. Applicant's eligibility for assignment to a sensitive position is granted.

**STATEMENT OF THE CASE**

On September 15, 2002, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended and modified (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On May 18, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on July 10, 2004. She elected to have a hearing before an administrative judge.

The case was assigned to me on October 14, 2004. With the concurrence of the parties, I conducted the hearing on November 16, 2004. The government introduced five exhibits. Applicant presented 15 exhibits and the testimony of two witnesses. Additionally, Applicant testified on her own behalf. DOHA received the transcript on December 9, 2004.

## FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR and noted mitigating conditions. Applicant's Answer to SOR, dated July 10, 2004, at 1, 9, 10. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant was born in Russia in 1958. Ex. 1 at 1. She was graduated from medical college with a degree in pharmacology in 1981. Answer to SOR, *supra*, at 2; Tr. at 64. Applicant worked as a pharmacologist in Russia between 1981 and 1994. Answer to SOR, *supra*, at 2

In 1987, Applicant met and married her husband. *Id.*; Tr. at 66. He is a mechanical engineer and worked for a museum in Russia. Answer to SOR, *supra*, at 2. Applicant's husband belonged to a religion disfavored in Russia; Applicant and her husband felt they were the victims of continuing, overt hostility and discrimination. *Id.* at 3; Tr. at 77-78, 79-80. Their living conditions were difficult. Applicant and her husband shared a single apartment (four bedrooms, one bath and one kitchen) with three other unrelated families. Tr. at 74. In 1991, Applicant gave birth to a son, further complicating the restricted living conditions. Answer to SOR, *supra*, at 2.

Applicant and her family emigrated to the United States in November 1994 as religious refugees. *Id.* Her husband's uncle was a citizen and resident of the United States, and served as their sponsor. Tr. at 78. Her mother-in-law emigrated to the U.S. in early 1994.

Applicant gave birth to their second child, a daughter, in 1996. In 1998, Applicant returned to Russia to visit her relatives, so that her grandmother could meet her daughter. Tr. at 118-19.

Applicant's degree in pharmacology from Russia did not authorize her to practice in that area in the U.S. She took English language courses through a community center and a local community college. Tr. at 66. Applicant then completed a series of computer science classes at a community college and obtained her certificate as a quality assurance engineer in December 1995. Tr. at 64. She worked for several companies between 1996 and 2001, garnering praise for her initiative, leadership, and professionalism. Tr. at 88; Exs. A, B. Applicant's former supervisor described her duty performance as "outstanding," and reported she is a conscientious employee. Tr. at 28, 36. He saw nothing about Applicant to suggest she was a security risk, and opined she would not be vulnerable to duress through her Russian relatives. Tr. at 35-36, 41.

Applicant became a naturalized citizen of the U.S. in August 2002. Ex. 1 at 1. She began working for her present employer, a defense contractor, in September 2002, in a position of public trust. Ex. C. She has since been promoted to senior engineer and received accolades for her performance. Tr. at 90; Ex. P. Applicant's current supervisor praised her integrity, dedication, and trustworthiness, and recommended her for a position of public trust. Ex. C.

Applicant's husband has become a citizen of the United States. Tr. at 59, 67. He works in the computer field. Tr. at 67. Her children are also U.S. citizens. Tr. at 68. They attend school in the U.S. and are active in the community. Tr. at 69-72. A faith-based group assisted Applicant's family in adjusting to the U.S. Tr. at 45. A volunteer from that group testified that Applicant's family has assimilated well into the American culture. Tr. at 50, 55. Applicant votes in U.S. national and local elections. Tr. at 85-86.

Applicant and her husband have a home, investments, bank accounts, and personal property in the U.S. Ex. Q; Tr. at 121. They do not have any financial interests outside the United States, and do not anticipate inheriting any property in Russia. Tr. at 122. Applicant does not plan to visit Russia at any time in the future. Tr. at 129.

Applicant's father was a Russian citizen and resident. Tr. at 91. Her parents divorced in when Applicant was four years old, and she had little contact with him. Answer to SOR, *supra*, at 7. Her father died in 2003. Tr. at 92. She does not know if he has any relatives in Russia. *Id.*

Applicant's mother is a citizen and resident of Russia. Tr. at 90-91. She is 70 years old and is a retired meteorology teacher. Tr. at 95. She worked for the government because all schools were public schools until the fall of the Soviet Union in 1991. Answer to SOR, *supra*, at 7. She spends her days caring for herself and her mother. *Id.* She lives on the Russian equivalent of social security. Tr. at 96, 127-28. Applicant's mother visited her in the U.S. in 1996 and 2002. Tr. at 100-01. Applicant sends about \$500.00 to \$700.00 per year to her mother as a gift. *Id.*; Tr. at 96. She contacts her mother in Russia at least once a month. Tr. at 98-99.

In 2004, Applicant's mother filed a petition to immigrate to the United States. Ex. D. At the time of the hearing, the petition had been approved and she was waiting for an immigration visa. Ex. F; Tr. at 97.

Applicant's grandmother is 88 years old and is a citizen and resident of Russia. Tr. at 102. Applicant last saw her grandmother in Russia in 1998. Tr. at 104. She used to call her about once or twice a year, but cannot do so now. Tr. at 103. Applicant's grandmother is in very poor health, and is unable to communicate with those around her. Tr. at 102. Applicant recognizes that her grandmother may not live much longer. Tr. at 129.

Applicant's mother-in-law is a Russian citizen permanently residing in the United States. Tr. at 110. She immigrated to the U.S. as a religious refugee. Tr. at 110. She applied for U.S. citizenship, but was unable to pass the language test. Ex. E; Tr. at 112-13. Applicant's mother-in-law has no continuing contact with Russia. Tr. at 115.

Applicant's cousin is a citizen and resident of Russia. Tr. at 91. She is a 41-year-old music teacher at a private school; she does not work for the Russian government. Tr. at 104-05, 107-08. Applicant last saw her cousin when she visited Russia in 1998. Tr. at 107. She calls her in Russia about two or three times a year to stay in touch and discuss family matters. Tr. at 105.

Russia is a federation, and came into existence after the dissolution of the Soviet Union in 1991. Ex. 3 at 4. The executive branch wields considerable power; the legislative and judicial branches are comparatively weak. *Id.* at 5. The new government has made progress in recognizing international human rights, however its record on human rights remains uneven and has worsened in some areas in recent years. *Id.* at 6. The Russian constitution provides for freedom of religion, but some faiths continue to encounter prejudice and discrimination that has not been prosecuted effectively by governmental authorities. *Id.* at 7.

Russia has taken significant steps toward improving its foreign relations. Exs. 3 at 11; G. After assuming the Soviet Union's seat in the United Nations, Russia entered into several agreements with NATO to form a partnership for security. Ex. 3 at 11. Russia's relations with the U.S. have also improved dramatically. Exs. G; H; I. The countries cooperate in many areas, including nuclear non-proliferation, the global war on terrorism, and the fight against HIV/AIDS. Exs. 3 at 11; J; L, M, N, O. The U.S. is funding major programs in Russia to improve security, humanitarian assistance, economic reform, nuclear safety, public health, and democratic reform. Ex. 3 at 12.

Russia has engaged in a prolonged struggle against separatists in the Republic of Chechnya. *Id.* at 4. Federal forces control Chechnya, but separatists have launched numerous major terrorist attacks against government and civilian locations. Ex. 5 at 1. The attacks have not targeted Americans, although it is possible Americans may be random victims. *Id.* at 1-2. The State Department warns Americans against travel in Chechnya and neighboring regions. *Id.*

## **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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to*

*Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

**Foreign Influence:** A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he or she may be bound by affection, influence, or obligation, are (1) not citizens of the United States or (2) 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.

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

"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." DoD 5200.2-R, Appendix 8. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 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. *Id.*

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. 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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

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 a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

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

The government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under the Foreign Influence Guideline of Appendix 8 of DoD 5200.2-R. The Regulation provides that it may be a disqualifying condition if "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." The Regulation does not define the phrase "immediate family member," but the Directive, ¶ E2.A2.1.3.1, defines the phrase to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's mother is a citizen and resident of Russia. Additionally, Applicant has close ties of affection or obligation to her mother-in-law, who is a citizen of Russia residing in the U.S., and her cousin, who is a citizen and resident of Russia.

These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." DoD 5200.2-R, Appendix 8, Foreign Influence. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb. 8, 2001).

The security concerns raised by Applicant's relatives who are citizens or residents of Russia may be mitigated where it is

determined that "the immediate family member(s) . . . would not constitute an unacceptable security risk." DoD 5200.2-R, Appendix 8, Foreign Influence. The Regulation does not provide a definition or explanation for the phrase, "unacceptable security risk." However, in similar circumstances, ¶ E2.A2.1.3.1. of the Directive provides that it may be mitigating where the relatives 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 involved and the United States."

Applicant's mother, mother-in-law, and cousin are not "agents of a foreign power." See 50 U.S.C.A. § 1801(b). They are not employees of the Russian government, or otherwise associated with a "foreign power."

In assessing whether relatives are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Russia was once an authoritarian state controlled by the communist party. Ex. 3 at 4. Since the dissolution of the Soviet Union in 1991, Russia has reformed its government toward democratic ideals. Russia is on good relations with the United States, and is cooperating in numerous significant areas. Russia's constitution protects human rights, but its record of enforcing these rights is uneven. *Id.* at 6. Additionally, terrorist groups have launched several attacks in Russia. Thus, a possibility exists that a foreign power in Russia would attempt to exploit or pressure its residents to act adversely to the interests of the United States.

It is important to consider also the vulnerability to duress of Applicant's relatives. Applicant's mother is 70 years old and retired. She relies on her governmental stipend for support. Under these circumstances, Applicant's mother is vulnerable to governmental pressure or duress. I also note that her petition to immigrate to the U.S. was approved and she is awaiting her visa. Once she is physically located in the U.S., her susceptibility to adverse influence from a foreign power will be greatly diminished.

Applicant's cousin is a citizen and resident of Russia. She does not work for the government or rely upon a government pension. Under the circumstances, she is potentially vulnerable to coercion or pressure from the Russian government, although there is no evidence this has ever occurred.

Applicant's mother-in-law is a citizen of Russia, but resides permanently in the U.S. She was a religious refugee from Russia, and has never returned to that country. Since she resides in the U.S., the possibility that a foreign power in Russia could exert improper influence against her is extremely limited.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through her ties with her relatives. Applicant has not lived with her mother since she was 17 years old, but she still has strong familial and emotional ties to her mother. She has close familial ties to her mother-in-law as well. Although Applicant does not have frequent or regular contact with her cousin, I find some ties of familial obligation exist. Nevertheless, Applicant has substantially greater ties to the United States. She left Russia because of difficult living conditions and the religious persecution of her husband's family. She has lived here since 1994, and has been a citizen since 2002. Her husband and

two children are citizens of the U.S., and all her family's financial interests are here. She has worked for her present employer for several years. I conclude Applicant is unlikely to allow herself to be adversely influenced by a foreign power in such a way that would force her to choose between loyalty to the relative in question and the United States.

I balanced all the factual circumstances and applied them to the adjudicative criteria established in the Regulation in light of the whole person concept. I considered the likelihood that the government of the Russia or a foreign power in that country would exploit Applicant's relatives, their vulnerability to pressure, coercion, or duress, and Applicant's ties of affection or obligation to her relatives and to the United States. I conclude the mitigating condition set out in the Regulation applies. Applicant has mitigated the security concerns arising from her family ties to relatives who are citizens or residents of Russia.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Foreign Influence: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant's eligibility for assignment to sensitive duties. Eligibility is granted.

Michael J. Breslin  
Administrative Judge