

DATE: October 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23434

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esquire, Department Counsel

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Joseph Gusmano, Esquire

SYNOPSIS

In January 2000, Applicant, an American citizen by birth, married a Russian citizen with whom he still lives. Applicant's wife's parents (now divorced), grandmother, and a great aunt, still live in and are citizens of Russia. Applicant's wife maintains regular contact with her mother. Applicant has failed to mitigate the security concerns under Guideline B arising from his ties of affection or obligation to foreign citizens. Clearance is denied.

STATEMENT OF THE CASE

On September 21, 2004, the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline B (Foreign Influence). The SOR informed Applicant that, based on investigative information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(U\)](#)

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on December 22, 2004, and I convened a hearing in this matter on February 24, 2005. The parties appeared as scheduled and the government presented nine exhibits (GE 1 through 9), and the testimony of one witness. Of these exhibits, GE 3 through 8 were admitted for administrative notice, and after hearing comments and objections from Applicant, I agreed to consider them for informational purposes. Applicant presented two exhibits (AE A and B), which were admitted without objection. Applicant also presented his own testimony and that of two other witnesses. DOHA received the transcript (Tr) on March 8, 2005. Issuance of this decision was delayed due to an unusually large caseload.

PROCEDURAL ISSUE

At the hearing, the government moved to amend the SOR by adding the following allegations under Guideline B:

"g. Your spouse's grandmother and a great aunt are citizens of and currently reside in Russia.

"h. Your spouse gave a gift of vodka and candy to a Russian government official to expedite processing of your spouse's exit paperwork."

Over Applicant's objection, I granted the government's motion to add subparagraph 1.g, as stated above. However, for the reasons stated in the transcript at pages 139 - 142, and because it would be redundant to the allegation in SOR ¶1.e, I denied the motion to add subparagraph 1.h, as stated above.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 44 years old, was born and raised in the United States, and is currently employed by a defense contractor as a senior account manager. Applicant is a college graduate and is now married for the second time. His first marriage lasted from 1995 until a divorce in July 1997. In January 2000, he married a Russian woman he met through a matchmaking service specializing in matching American men and Russian women.

Applicant found the matchmaking service on the internet, but his contacts with his wife were initially conducted by faxing letters. Applicant's wife was one of nine Russian women with whom Applicant began corresponding through the matchmaking service in late 1998 or early 1999. After deciding to correspond only with the woman he eventually married, Applicant also called her and sent her e-mails. These contacts led to a two-week visit to Russia in October 1999 to meet his intended bride and her family. At the end of that visit, Applicant proposed marriage and she accepted.

When Applicant returned home, he applied for his fiancée's entry to the U.S. She arrived in December 1999, and the couple was married on January 14, 2000. Applicant's wife is now a permanent resident alien and is in the final stages of qualifying for U.S. citizenship. Neither Applicant or his wife have returned to Russia since 1999. His wife still has Russian citizenship and holds a valid Russian passport.

Applicant's mother- and father-in-law are Russian citizens who still live in that country. They are divorced and Applicant's wife has had no contact with her father, whose whereabouts are unknown, for several years. Applicant's wife calls her mother, who works as a cleaning woman since the end of her marriage, on average about once a week. After Applicant and his wife were married, Applicant's mother-in-law sent them \$4,000 from her savings to use in getting started in their life together. Applicant's mother-in-law later sent them an additional \$6,000 from savings. She had accumulated these funds by saving her husband's money during their marriage and from her own income thereafter.

Applicant's wife and her mother do not trust Russian government officials and feel they are generally corrupt. His mother-in-law keeps all her money either in her apartment or on her person as she does not trust Russian banks. Applicant's wife had to pay a small bribe to a Russian official to complete her emigration paperwork after she agreed to go to the U.S. to marry Applicant. Applicant's mother-in-law has insisted Applicant's wife not return to Russia in light of the crime and corruption there.

Since the fall of the Soviet Union, Russia and the United States have had a closer, less adversarial relationship. However, the interests of the two nations are still often times at odds with each other. Russia still aims much of its intelligence resources at the United States and actively operates in all major aspects of intelligence collection and exploitation. The Russian government can now be characterized as more democratic than the Soviet regime; however, the executive branch generally wields considerable power unchecked by either the legislative or judicial branches, the latter often being subject to undue political influences. It is not surprising, then, that Russia's human rights record has not improved in the past 15 years. As a result of rampant organized crime, lack of law enforcement, and government corruption, average citizens in Russia are often subjected to crimes of extortion and outright theft by both criminals and government officials alike.⁽²⁾

Applicant's wife's grandmother and great aunt also live in and are citizens of Russia. His wife's contact with them is limited to once or twice yearly holiday greetings. Applicant has had no contact with them, and only has limited contact

with his mother-in-law. His wife also has occasional contact with a friend from her school days in Russia. He helped with Applicant's transportation to and from the airport when Applicant visited Russia.

POLICIES

The Directive sets forth adjudicative guidelines⁽³⁾ to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline B (foreign influence).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁴⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁵⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁶⁾

CONCLUSIONS

Under Guideline B, 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.⁽⁷⁾ Available information supports the SOR allegations that Applicant lives with his wife, who is a foreign citizen (SOR ¶ 1.a), that her parents and two other relatives are also citizens of Russia and still live there (SOR ¶¶ 1.b and 1.g), and that Applicant's wife has frequent contact with her mother (SOR ¶ 1.c). Available information also supports the allegation that Applicant traveled to Russia in October 1999 (SOR ¶ 1.d), that Applicant's wife bribed a Russian government official (SOR ¶ 1.e), and that Applicant's mother-in-law sent him and his wife a total of \$10,000 as gifts to help them start their lives together (SOR ¶ 1.f).

SOR ¶¶ 1.a, 1.b, 1.c, and 1.g, as supported by the government's information, raise security concerns specifically addressed under Guideline B. SOR ¶ 1.d, also established by the government's information, shows only that Applicant traveled to a foreign country, which is not by itself disqualifying. Nor in this case is it probative of whether he is directly, or through his ties to his wife, susceptible of foreign influence. SOR ¶¶ 1.e and 1.f, as established by the government's information, also fail to plead any Guideline B disqualifying condition;⁽⁸⁾ however, I have considered these facts as part of the record as a whole in determining whether Applicant's ties of affection should be disqualifying.

Based on the foregoing, Guideline B disqualifying condition (DC) 1⁽⁹⁾ applies. The DOHA Appeal Board has held that, as a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection to the immediate family members of the person's spouse. These circumstances raise security concerns just as if the facts concerned Applicant's own immediate family members.⁽¹⁰⁾ The information and testimony presented here does nothing

to rebut that presumption. Applicant's wife is close to her mother as evidenced by their frequent contact and by the fact her mother gave up her life's savings for her daughter and new husband.

Further, an overarching consideration here is that Russia has a poor human rights record, little effective law enforcement, rampant organized crime and government corruption, and maintains an aggressive intelligence stance toward the U.S. These circumstances raise reasonable concerns about the possibility a Russian citizen with ties to an American holding a security clearance would be targeted for coercion in furtherance of hostile intelligence gathering efforts against the U.S. The fact Applicant's wife had to bribe a government official when she was trying to leave Russia, and her testimony about the corrupt nature of Russian government officials, further support these considerations.

Of the listed mitigating conditions (MC), MC1 ⁽¹¹⁾ fails because, although Applicant's wife's family are not agents of a foreign power, Applicant has not shown they are not in a position to be exploited by a foreign power. To the contrary, based on the foregoing discussion of the applicability of DC 1, it is reasonable to conclude Applicant's wife's family are in such a position. MC 2, ⁽¹²⁾ MC 4, ⁽¹³⁾ and MC5 ⁽¹⁴⁾ are factually inapposite to this case, and MC 3 ⁽¹⁵⁾ applies only to the allegation in SOR ¶ 1.g as there has been little contact with Applicant's grandmother or great aunt, and the contact was casual at best. However, Applicant's wife still maintains regular contact with her mother.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions listed under Guideline B. No single fact or adjudicative factor is dispositive of the security concerns raised in this case; however, a fair and commonsense assessment ⁽¹⁶⁾ of the entire record before me reflects an unacceptable security risk raised by Applicant's ties of affection to foreign citizens residing abroad.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. GE 8, GE 9, GE 10, GE 11.

3. Directive, Enclosure 2.

4. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

5. *See Egan*, 484 U.S. at 528, 531.

6. *See Egan*; Directive E2.2.2.

7. Directive, E2.A2.1.1.

8. Indeed, the allegations in SOR ¶¶ 1.d, 1.e, and 1.f are superfluous as administrative pleadings in that they merely present facts for the record and add nothing to the purpose of having pleadings in the first place; that is, to frame the issues to be decided in a given case.

9. 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;

10. Appeal Board Decision, ISCR Case No. 01-03120 (February 20, 2002).

11. Directive, E2.A2.1.3.1. 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;

12. Directive, E2.A2.1.3.2. Contacts with foreign citizens are the result of official United States Government business;

13. Directive, E2.A2.1.3.4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required;

14. Directive, E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

15. Directive, E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

16. Directive, E2.2.3.