

DATE: July 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04300

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esquire., Department Counsel

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign preference as she has traveled to Russia to renounce her dual citizenship in April 2005 and her foreign passport has expired. She has similarly mitigated foreign influence concerns over her mother, aunt and father-in-law who are citizens of and reside Russia and over her sister and family who are citizens of and reside in Israel. Applicant has limited contact with them. Applicant assures that she would contact appropriate U.S. officials if any pressure were attempted is credible given her long history at work since 2000 and her strong ties to the U.S. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) ⁽¹⁾ to the Applicant on October 7, 2004. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant her access to classified information. The SOR alleges specific concerns over foreign preference (Guideline C) in paragraph 1 and over foreign influence (Guideline B) in paragraph 2. Applicant replied to the SOR allegations in an Answer notarized on November 4, 2004, where she requested a hearing.

After Department Counsel stated the case was ready to proceed on January 4, 2005, the case was assigned to me on January 6, 2005. On February 1, 2005, DOHA issued a Notice of Hearing and set this case to be heard on February 24, 2005, in a city near where Applicant lives and works. At the hearing the government presented four exhibits (Exhibits 1-4) which were admitted into evidence without objection. Department Counsel's request that administrative notice (AN) be taken of the information contained in Exhibits I - XII was granted as Applicant did not object. (AN I-XII; TR 17-21)

Applicant testified and requested that she be allowed thirty days to submit additional evidence. Department Counsel did not object so the additional time was granted. (TR 48, 51, 57-58)

On March 14, 2005, Applicant and Department Counsel⁽²⁾ initiated a conference call where Applicant requested sixty more days until May 16, 2005, to submit documents as she needed to go to Russia to relinquish her citizenship and her passport. On May 9, 2005, Applicant submitted her additional evidence (Exhibit A) and provided a copy to Department Counsel. On June 9, 2005, I made an inquiry to Department Counsel as to whether the government would object to Applicant's submissions. On June 13, Department Counsel responded that he had no objection to the Applicant's documents being admitted into evidence. Consequently I admitted Exhibit A, and the record closed. On The transcript (TR) was received on March 15, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 42 years old, has worked for a defense contractor (Employer #1) in State #1 since April 2000. In June 2000 she completed a Security Clearance Application (Standard Form 86). Previously, Applicant worked for another corporation in State #2 from 1997 to March 2000. (Answer; Exhibits 1, 2)

Applicant received a master's degree from a university in Moscow in January 1987. She then worked as an engineer in Moscow from 1987 to 1988. Applicant came to the U.S. in 1989 with her husband as he had a teaching position at a university in State #3 from 1989 to 1990 and then had another teaching position at a university in State #4 from September to November 1990. He then took a position at a university in State #1, and they moved to State #1 in 1990. Her husband financially supported her when she became a full-time student in 1991. She also worked as a teaching assistant at that university from 1992 to 1995 and again in 1996. She received a Ph.D. in 1997 from this state university in State #1. (Answer; Exhibits 1, 2; TR 34-37)

Applicant was married in Russia in 1987, but is currently separated from her husband. He is a citizen of Russia who lives in the U.S. and became a naturalized U.S. citizen in May 2001. She has a son born in 1988 in Russia who is a citizen of Russia who currently lives in the U.S. with her and became a naturalized U.S. citizen in April 2001. (Exhibit 1; TR 33-34; 48)

Foreign Preference

Applicant was born in Russia and resided there until 1989. She became a naturalized U.S. citizen in October 1999 in State #1, but retained her dual citizenship with Russia and had a Russian passport. She received her U.S. passport in 1999 and used it for all foreign travel except for travel to Russia. She used her Russian passport for travel to Russia for convenience. When her passport from Russia expired in 2000, she had her mother renew it for her in Russia. It was issued in May 2000 and was valid until May 2005. She traveled to Russia in January 2002 on her expired Russian passport and obtained the renewed one from her mother to exit Russia in February 2002. She also explained that she had an "inner passport" for travel within Russia which she has not used as she remained in Moscow when she visited. (Exhibits 1, 2, 3, 4; Answer) Since Applicant left Russia, she has not accepted any other rights or benefits of citizenship such as voting, pension, etc. She does not intend to do so in the future. (Exhibit 2 at page 7) She has no intention of ever returning to Russia to live or work there. (Exhibit 2 at 9)

When interviewed by the Defense Security Service (DSS) in June 2002, Applicant stated that she had not taken any steps to relinquish her Russian passport and was not willing to give up her dual citizenship as a condition for access to classified information. While her mother is alive, Applicant wanted to be able to travel to Russia easily if her mother became ill. She wanted to avoid the possible delay to get a visa to travel to Russia on her U.S. passport. She has recently learned about U.S. travel agencies that make all of the arrangements for travel to Russia and can expedite a visa on a U.S. passport. She used that service for her travel to Russia in April 2005. (Exhibit 2 at 11-12; Answer; TR 27-28; Exhibit A)

Applicant owns an apartment in Russia which was provided to her by the Russian government. It is worth about \$30,000. It was assigned to her and her son when they resided in Moscow. After Applicant moved to the U.S., her mother used the apartment and moved into the apartment in 1993. Applicant made her mother a co-owner in 2001 and

traveled to Russia to complete the paperwork; her mother was officially given permission to reside there in 2001. (Exhibit 2) Applicant does not retain cultural ties to Russia and is fully assimilated into the U.S. as demonstrated by her U.S. affiliations, vested interests, associations, financial ties and loyalties. The majority of her investments and assets, such as her 401K plan, are in the U.S. as is her U.S. home which is worth more than \$240,000, which is the price they paid for it in 1999. In her U.S. bank account she has \$50,000. She has no foreign bank accounts. (Exhibit 2; TR 23, 28-29; 37-38; 46-47) She is willing to give away her share in the apartment in Russia. She is not able to sell it as her mother lives in the apartment. (Answer; TR 37; 45)

Action to Relinquish Russian Citizenship and Passport

At the time she answered her SOR in November 2004, Applicant stated she knew some people who had dual citizenship and had a security clearance, so she had initially hoped she also could do so. She did not fully understand the security requirements prohibiting use of a foreign passport until Department Counsel explained the policy before her hearing. Then Applicant stated she was willing to relinquish her Russian citizenship. (Answer; TR 25)

At the time of the hearing in February 2005 she brought her Russian passport to the hearing to show that she was willing to surrender it. (TR 22-23) She explained did not understand what procedures to take to relinquish her Russian citizenship, but was willing to do so now that she understood the requirement as she wants to have access to classified information to do her job. (TR 23; 48-51)

After the hearing, she investigated those procedures and traveled to Russia to relinquish her Russian citizenship in April 2005. From a U.S. travel agency, Applicant got a Russian visa to travel on her U.S. passport to and from Russia. As her Russian passport was to expire in May 2005, she left it in Moscow to relinquish at the time her citizenship is irrevocably annulled. She hired a lawyer in Russia to prepare the documents to abjure and retract her Russian citizenship. It took her four days to obtain all the required papers and make the official translation into English. She had to go to the Passport Visa Department at 5 AM in order to be sure to be admitted before the office closed at 5 PM. According to Russian Federation Law, her citizenship will be "irrevocably annulled by the decision of the presidential committee" which takes up to six months. Her Russian passports will then become invalid. (TR 27, Exhibit A)

Foreign Influence

Applicant's mother is 72; she is a citizen of Russia who resides in Russia. She is an engineer in a mathematical institute and edits scientific papers. She also works in a museum. Applicant has weekly contact with her mother by telephone and occasionally by e-mail. Her mother has visited in the U.S. every two years. Applicant provides financial assistance to her mother of about \$1,000 to \$2,000 per year to help pay the cost of her travel to the U.S. (Exhibit 1, 2; TR 29-30; 41-43) She has traveled to Russia to visit her mother in 1995, 2002, and 2005. (Answer; Exhibit A; TR 40) If anyone would attempt to pressure her mother in order to get information from Applicant, she would report it to the U.S. authorities and seek help. (TR 44)

Applicant's aunt is a citizen of Russia currently residing in Russia. She works part-time in a museum. Applicant telephones her aunt two to three times a year. Applicant provides financial assistance to her aunt of about \$600 per year. (Exhibits 1, 2; TR 31, 40-43) She traveled to Russia to visit her aunt in 1995, 2002, and 2005. (Answer)

Applicant's father-in-law is a citizen of Russia who lives in Russia; he is a theoretical physicist at the Russian Academy of Science, a scientific society without ties to the government. She has contact with him three to five times a year by telephone and visits him in Russia when she travels there. He has visited in the U.S. on three or four occasions. She is not close to her father-in-law. (Exhibits 1, 2; TR 30-33)

Applicant's sister is a citizen of and resides in Israel; she is not working but was employed by a private landscaping company. She is married and has three children. Her husband worked for the Israeli branch of a U.S. company. Applicant has visited her sister and family in Israel and retains contact with her sister, her husband and the children. Her eldest nephew has served in the Israeli military and her niece is now in the Israeli military as service is mandatory. She speaks to them once every couple of months when she calls her sister. Her youngest nephew is still in school. (Exhibits 1, 2; TR 39-40, 44-45) She has traveled to Israel to visit her sister in 1991, 1994, and 1997. She has never been approached by any intelligence organizations from any foreign government. (Answer; TR 43)

Applicant no longer has any close friends in Russia. (TR 37)

Both Russia and Israel are active collectors of economic espionage. (AN I-XII)

However, given Applicant's extensive ties to the U.S., I conclude it is unlikely she would succumb if any of these relatives were pressured by the governments in Russia or in Israel. She credibly established that if someone were pressuring her family, she would not surrender to that kind of pressure. Applicant established she would choose her loyalty to the United States over loyalty to her mother, aunt, and father-in-law in Russia or her sibling in Israel.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline C - Foreign Preference

E2.A3.1.1. The concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Guideline B - Foreign Influence

E2.A2.1.1. 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: (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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Preference

The Government raised a security concern over Applicant's acts which indicate a preference for a foreign country over the United States as she may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government established its case that Applicant exercised her Russian citizenship and continued to possess her foreign passport after she became a naturalized U.S. citizen as she used her foreign passport exclusively for travel to Russia. Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.1.The exercise of dual citizenship; E2.A3.1.2.2.Possession and/or use⁽³⁾ of a foreign passport. Under DC 1 and DC 2 this disqualifying conduct raises a security concern over her possible preference for her status as a Russian citizen over her status as an U.S citizen. The possession of a foreign passport could allow Applicant to travel without accountability and

outside the ambit of U.S. immigration controls which raises concerns when someone has access to U.S. classified information. Further, the Government established through the documents they submitted for administrative notice (AN I-XII) that even governments that are allies of the U.S. will not have identical interests over vital matters.

On the other hand, Applicant has taken substantial steps to mitigate⁽⁴⁾ these security concerns. With respect to her dual citizenship, initially, Applicant did not understand and was unsure how to proceed to comply with the security requirements of the OASDC3I memorandum of August 16, 2000. Once Applicant understood the U.S. security concerns over her retaining her foreign citizenship, she expressed her willingness to surrender her passport. Finally, she began the formal steps to renounce her Russian citizenship in April 2005. Applicant went to Russia to hire a lawyer and complete the paperwork to relinquish her Russian citizenship and passport. Thus, MC 4 applies because she renounce her foreign citizenship. As required by the OASDC3I memorandum of August 16, 2000, her passport is expired and will be returned to the government when her citizenship is "irrevocably annulled by the decision of the presidential committee" which may take six months under Russian Federation Law.

As the Appeal Board established in ISCR Case No. 03-11765 (April 11, 2005) at 14, "Given the wording of Foreign Preference Mitigating Condition 4, the absence of evidence that Applicant's application for renunciation of . . . citizenship has been approved did not preclude the Administrative Judge from applying that mitigating condition." Thus, her actions in demonstrating her willingness to renounce or abjure her Russian citizenship by traveling to Russia to file the appropriate paperwork establish she does not prefer the interests of another country over those of the U.S.

Having weighed the record evidence as a whole under the other factors outlined in Directive, I conclude Applicant's disqualifying conduct was not undertaken in such a way as to establish her preference for a foreign country over the U.S. Additionally, considering the totality of the evidence, I conclude that there is little, if any, probability Applicant will someday reacquire her Russian passport and use it instead of her U.S. passport. Applicant has lived and worked in this country continuously since 1989. She became a naturalized U.S. citizen in 1999. While she is a co-owner of an apartment in Moscow, she has substantially more assets in the U.S. Her son and husband are in the U.S. She has demonstrated a strong preference for the U.S. over any other foreign nation by giving up her Russian citizenship even though she has an elderly mother who remains in Moscow.

Therefore, I conclude Guideline C for Applicant. Thus, favorable findings are warranted with respect to subparagraphs 1.a. through 1.g. of the SOR.

Foreign Influence

Because of Applicant's family ties in Russia and Israel, the government⁽⁵⁾ raised foreign influence concerns under disqualifying conditions (DC): 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; and E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. Applicant's mother, aunt and father-in-law are citizens of Russia and reside there; she also co-owns an apartment in Israel which she estimates is worth \$30,000. Also, her sister and family are citizens of Israel who reside in Israel. One nephew has served in the Israel military, and her niece now serves in the Israeli military.

While I have seriously considered these security concerns and the document submitted for administrative notice which raises security concerns over Russia's and Israel's extensive industrial espionage, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigated⁽⁶⁾

the Government's security concerns over possible foreign influence under E2.A2.1.3 .5., as her foreign financial interests are minimal and not sufficient to affect her security responsibilities. She has substantially more assets in the U.S. including her family home bought in 1999 and worth more than \$240,000. Also, I have evaluated the relevance of her conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or

absence of rehabilitation and other pertinent behavioral changes; E.2.2.1.7. The motivation for the conduct; E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these factors, I conclude Applicant has overcome foreign influence security concerns. Given her strong ties to the U.S. and her limited contact with Russia and Israel since she became a U.S. naturalized citizen, there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) All of her immediate family are in the U.S., and the majority of her financial ties are in the U.S. Applicant has been a naturalized U.S. citizen for over fifteen years. She returned to Russia in April 2005 to abjure her Russian citizenship and has had limited visits with her mother, aunt and father-in-law in 1995 and 2002. She provides minimal support to her mother and aunt. She has only visited her sister and family in Israel in 1991, 1994, and 1997. While she has contact with her relatives in Russia and her relatives in Israel, that contact is limited. While her niece serves in the Israeli military, she has limited contact with her. Clearly, she put her interests in the U.S. ahead of her loyalty to her elderly mother when she chose to renounce her Russian citizenship.

Given her long history with her employer since April 2000, it is unlikely that she could be exploited by coercive or non-coercive means by the government in Russia or in Israel in a way that could force Applicant to choose between loyalty to her mother, aunt, father-in-law, her sibling and family and her loyalty to the United States. She stated that should any such attempt be made she would immediately contact the appropriate U.S. authorities. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these circumscribed family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.q. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline C FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline B FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Subparagraph 2.i.: For Applicant

Subparagraph 2.j.: For Applicant

Subparagraph 2.k.: For Applicant

Subparagraph 2.l.: For Applicant

Subparagraph 2.m.: For Applicant

Subparagraph 2.n.: For Applicant

Subparagraph 2.o.: For Applicant

Subparagraph 2.p.: For Applicant

Subparagraph 2.q.: For Applicant

DECISION

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

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).

2. On March 22, 2005, Mr. Mendez advised that he was transferring the case to Eric Borgstrom.

3. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport" The DoD August 16, 2000, Policy Clarification Memorandum stated, in part: "The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. **** Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government."

4. **E2.A3.1.3. Conditions that could mitigate security concerns include:** E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country; E2.A3.1.3.2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship; E2.A3.1.3.3. Activity is sanctioned by the United States; E2.A3.1.4.4. Individual has expressed a willingness to renounce dual citizenship.

5. ". . .Department Counsel is not required to prove that there is a clear and present danger or imminent threat to classified information before access to classified information is denied or revoked. Nor does Department Counsel have to prove that a particular foreign country is targeting a particular applicant before access to classified information is denied or revoked." See Appeal Board Decision and Reversal Order, ISCR Case No. 02-24267 (May 24, 2005) at 6.

6. E2.A2.1.3 Conditions that could mitigate security concerns include: 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; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.