

DATE: February 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04781

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has worked as an installer at a defense contractor since 2001. He was born in Azerbaijan of native-born United States citizens who currently reside in the U.S. He became a naturalized citizen of the U.S. in 1993. He currently resides in the U.S. with his Russian-born wife. He and his wife have extended family members residing in Russia. If his family members were threatened by the Russian government, Applicant would disclose any classified information asked of him for the sake of his family. Grave questions and doubts remain as to Applicant's security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 11, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline B (Foreign Influence).

Applicant answered the SOR on August 20, 2004. [\(U\)](#) Department Counsel submitted the government's written case on October 28, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on November 22, 2004 and did not submit any additional information for consideration. The case was assigned to me on January 21, 2005.

FINDINGS OF FACT

Applicant admitted each of the factual 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, I make the following additional findings of fact:

Applicant is a 32-year-old employee of a defense contractor.⁽²⁾ He has worked there as an installer since February 2001.⁽³⁾

Applicant was born in Azerbaijan, of native-born U.S. citizens who currently reside in the United States.⁽⁴⁾ He became a naturalized citizen of the U.S. in 1993.⁽⁵⁾ He currently resides in the U.S. with his Russian-born wife.⁽⁶⁾

Applicant has extended family members who are citizens and residents of Russia.⁽⁷⁾ These extended family members consist of an aunt, an uncle, and six cousins.⁽⁸⁾ Applicant has limited contact by telephone with his extended family members.⁽⁹⁾ He has not been to Russia since he came to the U.S. in 1980.⁽¹⁰⁾ There is no evidence in the record that any of these family members have connections to the Russian government.

Applicant, through his wife, has additional extended family members, parents-in-law and a sister-in-law, who are citizens and residents of Russia.⁽¹¹⁾ His wife visited her family in Russia during the summer of 2001.⁽¹²⁾ Applicant has never visited his in-laws in Russia.⁽¹³⁾ Applicant has limited telephone contact with his wife's family in Russia.⁽¹⁴⁾ There is no evidence in the record that any of these family members have connections to the Russian government.

On June 19, 2002, Applicant executed a signed, sworn statement which was presented to a special agent of the Defense Security Service (DSS).⁽¹⁵⁾ In response to a hypothetical situation involving threats against his family members in Russia in an attempt to get classified information, he indicated that, if the U.S. government was unable to resolve the problem, he would disclose any information asked of him for the sake of his extended family members.⁽¹⁶⁾ Applicant's admission shows that he is potentially vulnerable to coercion by a foreign country and would be a security risk to the United States.

On June 7, 2002, Applicant submitted a signed, sworn statement.⁽¹⁷⁾ In that statement, he indicated that if threats were made against his family members in Russia in an attempt to get classified information, and if the U.S. government was unable to resolve the problem, he would disclose any information asked of him for the sake of his extended family.⁽¹⁸⁾

POLICIES

Enclosure 2 of the Directive sets forth Adjudicative Guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

Based on a consideration of the evidence as a whole, I find the following adjudicative guideline 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.⁽¹⁹⁾

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.

An administrative judge need not view the Adjudicative Guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in Section E2.2, Adjudicative Process, of the Directive, are intended to assist the administrative judge in reaching fair and impartial decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person" concept, all

available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The adjudicative process factors which an administrative judge should consider are: (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. ⁽²⁰⁾

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated on trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

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

In this case, the government has met its initial burden of proving by substantial evidence that the Applicant has extremely strong loyalty connections with his extended family in Russia (Guideline B). Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation, or mitigation which is sufficient to overcome the government case against him.

Applicant, a naturalized U.S. citizen, has at least eleven family members who are citizens and residents of Russia. The record is silent as to what these people do for a living and if any of them have connections to the Russian government, military, or security services. However, the record is quite clear in terms of what the Applicant would do if pressure was brought to bear by the Russian government on his relatives. The potential for coercion is of particular concern where, as here, the Applicant admits that if threats were made against his family members in Russia in an attempt to get classified information, and if the U.S. government was unable to resolve the problem, he would disclose any information asked of him for the sake of his extended family members. Under Guideline B, Foreign Influence, the following disqualifying conditions apply to this case: *an immediate family member, or a person to whom the individual has close times of affection or obligation, is a citizen of, or resident or present in, a foreign country* ⁽²¹⁾ *and sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress.*

Applicant has an immediate family member, his wife, who is a citizen of Russia and lives with him in the United States. Because of his wife, Applicant has close ties of affection or obligation to his parents-in-law and a sister-in-law, all citizens and residents of Russia. He also has ties of affection or obligation to his aunt, an uncle, and six cousins who are

citizens and residents of Russia. By his own admission, Applicant would divulge classified, sensitive information, if relatives in Russia were threatened, in order to protect their safety. I find that Applicant is a security risk and potentially vulnerable to coercion or pressure through his relatives in Russia.

The evidence in this case does not indicate that Applicant's relatives in Russia, or his spouse,

are employees or officers of the Russian government. There is no evidence indicating that any of his foreign relatives is an "agent of a foreign power. *See* 50 U.S.C.A. § 1801(b). Thus, the Directive E2.A2.1.3.1. is not appropriate (*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*). Applicant admits that he is potentially vulnerable to coercion and would disclose any classified, sensitive information asked of him for the sake of his family. Applicant's loyalty is toward his wife and extended family members in Russia, rather than the United States, if he were forced to make such a choice.

I considered all relevant and material facts and circumstances present here, the "whole person" concept, the applicable disqualifying and mitigating conditions, and other appropriate factors and guidelines. I find that Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion. Allegations 1.a. through 1.e. of the SOR are found against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Subparagraph 1.e: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Item 3 (Answer to SOR, dated August 20, 2004).
2. Item 4 (Security Clearance Application (SF 86), dated September 14, 2001).
3. *Id.*, at 1.
4. *Id.*, at 1, 3.
5. *Id.*, at 1.
6. Item 5 (Statement of Subject, dated June 19, 2002), at 1-2..

7. *Id.*, at 3.

8. *Id.*, at 1-2.

9. *Id.*

10. *Id.*, at 2.

11. *Id.*, at 1-2.

12. *Id.*, at 1.

13. *Id.*, at 2.

14. *Id.*, at 1.

15. *Id.*, at 1-3.

16. *Id.*

17. Item 6 (Statement of Subject, dated June 7, 2002).

18. *Id.*

19. Directive, E2.A2.1.1.

20. Directive, ¶ E2.2.

21. *Directive, E2.A2.1.2.1.*