DATE: November 4, 2004

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 03-06293

ECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In September 2000, Applicant married a Russian national whom he had met over the Internet. She had worked in a municipal tax office in Russia and in the Russian media before she came to the United States on a fiancee visa. The Foreign Influence concerns presented by her Russian citizenship, her close relationship with a sister who is a Russian resident citizen, and her ownership of a condominium in Russia are mitigated in that neither Applicant's spouse nor her siblings are foreign agents or in positions where they are likely to be vulnerable to undue coercion or influence. Applicant's verbal notification to his employer of his intent to marry a foreign national did not constitute the actual notice required by his company, but his noncompliance was contributed to, if not caused by, the failure of company security personnel to advise him properly. Clearance is granted.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), undated, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.[(1)] DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Foreign Influence (Guideline B).

On October 6, 2003, Applicant, acting *pro se*, executed an Answer to the SOR in which he admitted the allegations and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on January 8, 2004. Pursuant to formal notice dated January 28, 2004, a hearing was held on February 24, 2004. At that hearing, the Government raised in opening the issue of whether Applicant had failed to timely or accurately inform his employer of his foreign contacts. Applicant objected on the basis of unfair surprise, as the SOR allegations concerned only his spouse's Russian citizenship, her past employment with a Russian tax office, her ownership of a condominium in Russia, and her siblings' Russian citizenship and residency. On the Government's motion, the SOR was amended adding a new subparagraph under Guideline B, as follows:

1.e. You failed to properly, accurately, and timely report your contacts with a foreign national.

In accord with paragraph E.3.1.17. of the Directive, Applicant was informed the hearing would be continued to provide him with an opportunity to respond to the new allegation. Since Applicant had witnesses available to testify on his behalf with respect to the original SOR allegations, the undersigned allowed the parties to proceed on February 24, 2004, with the hearing to be reconvened on a later date as to the issue of adequate notification of foreign contacts. The Government's case on February 24, 2004 consisted of four exhibits. Applicant presented five exhibits and testimony from himself, his spouse, and his department head. A transcript of the proceeding was received on March 5, 2004.

On March 19, 2004, Applicant filed an Answer to SOR subparagraph 1.e., denying the allegation. Pursuant to notice dated March 23, 2004, the hearing was reconvened on April 21, 2004, with the focus being the issue of Applicant's notification to his employer (company A) of his relationship and contacts with his spouse prior to their marriage. Testimony was taken by telephone of one witness who had worked as a security specialist at company A before retiring, and in person from Applicant and a Defense Security Service (DSS) agent. Four additional Applicant exhibits were admitted. A transcript of the proceedings was received on May 5, 2004.

FINDINGS OF FACT

The SOR as amended Foreign Influence concerns related to the Russian citizenship of Applicant's spouse, her past employment with a tax office in Russia, the Russian citizenship and residency of her siblings, her ownership of a condominium in Russia, and Applicant's alleged failure to adequately notify his employer of his contacts involving his spouse. Applicant has admitted the allegations with the exception of the failure to notify his employer of this personal relationship with his spouse, a foreign national. Applicant's admissions are accepted, and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 43-year-old lead software systems engineer who has been employed by a federally funded research and development corporation (company A) since May 1984. He was granted top secret clearance in 1990, and briefed into a special access program for the first time in January 1992. These briefings included the requirements regarding reporting contacts with foreign nationals. In about December 2000, his special access was revoked as a result of his marriage to his current spouse, a Russian national. He has since had access to information classified to the secret level.

Applicant married his first wife in March 1993 and the following month his son was born. After a few marital counseling sessions, Applicant and his first wife separated in December 1997. Looking to establish a personal relationship with a foreign female, Applicant accessed a computer website titled "Brides from Russia" in May 1998. He began to correspond via electronic mail with a Russian national (his current spouse) using his work computer. Early in their relationship, Applicant learned that she was a part-time television producer in Russia as well as a public relations specialist in a Russian tax office. After two contacts with her, he filed a written notice of this foreign contact with his company's special security office (SSO) in mid-May 1998. He indicated he had a pen pal relationship by email a couple times a month concerning general topics with this Russian national. In addition to providing her name, he noted her employment at a television station in Russia.

Before their marriage, Applicant's current spouse traveled to the U.S. in July 1999. Following an initial visit with two friends from Russia living in the U.S., she stayed with Applicant for about 13 days in mid-July 1999. While she was in the U.S., but preceding her visit with him, Applicant notified his employer's SSO in writing in early July 1999 that this "pen pal" would be his house guest in mid-July. Applicant paid for her travel to the U.S.

As their relationship progressed over the Fall of 1999 and into the winter, Applicant's contacts with his spouse became more frequent (once or twice per week) and involved the telephone in addition to electronic mail. That winter, they discussed possibly marrying, but his divorce from his first wife was not final. By about February 2000, their contacts were for the most part daily.

Sometime between February and April 2000, Applicant notified the administrative assistant in company A's SSO that he intended on marrying a Russian national.[(2)] She contacted the DSS for advice and was informed the company should

wait until after his marriage to submit to DSS the pertinent information concerning his marriage and spouse's identity. (3) It is not clear that the administrative assistant documented Applicant's self-report. Applicant put nothing in writing until May 2000, when in update of his security clearance, he completed a security clearance application (SF 86) on which he listed his Russian fiancee as an associate living in Russia and annotated that they would likely be getting married later in the year. No formal report was filed in the SSO records of his impending marriage to a foreign national.

Applicant was divorced from his first wife in early April 2000. Two weeks later, the U.S. Immigration and Naturalization Service (INS) received the petition he filed to obtain a fiancee visa for his current spouse. In May 2000 she was granted a fiancee visa valid for three months, and she entered the U.S. from Russia on that visa in mid-July 2000. She cohabitated with Applicant from then on and they were married in September 2000. Applicant did not notify company A's SSO of his spouse's (then fiancee) entry into the U.S. in July 2000 or of their cohabitation because of his understanding that report of his marriage to the foreign national should wait until it took place. Around the time that Applicant's spouse came to the U.S. in July 2000 with the intent of marrying Applicant, Applicant told a coworker he planned to marry a Russian national, and he showed the coworker the website through which he became acquainted with his spouse. This coworker, who was not then in a supervisory relationship to Applicant, had been previously unaware of Applicant's relationship with the foreign national.

Shortly before his marriage to his spouse in September 2000, Applicant sent an email message to company A's SSO's administrative assistant and to the security office handling collateral clearances in which he stated:

[spouse identified by name], A Russian National, would like to come for a visit on Monday. The visit is not project related and is not classified in any way.

[administrative assistant identified by name]-Here is an opportunity to practice your Russian.

The administrative assistant responded, "Da! [Applicant identified by name], please give me a call." (Ex. J)

The next day, Applicant married his spouse in a small ceremony attended by only his spouse's friends. On his return to work in mid-September 2000, Applicant reported his marriage to company A's SSO. In late September 2000, Applicant attended security awareness training.

In late October, Applicant filed with company A's SSO a formal report of ongoing foreign contact with his spouse's sister, an English teacher in Russia. In early November 2000, the DSS was notified of the change in Applicant's marital status. Later that month, the SSO manager notified the special programs office at the local military base that Applicant had wed a Russian national who entered the U.S. in July 2000, and that Applicant's spouse had siblings in Russia, owned real property there, had worked for a local tax office in Russia, and had a nephew who was expecting a military commission on completion of his university studies in Russia. Company A's SSO reported Applicant had been advised his accesses may be suspended "since he did not advise in advance of his Intent to Marry a Non-US citizen." (*See* Ex. 3)

Two days after the SSO's notification to the base special programs office, Applicant executed a security clearance application disclosing his spouse's Russian citizenship, the Russian citizenship and residency of her five living siblings, and her ownership of a condominium in Russia. In early December 2000, the SSO at company A provided the base special program office with details of Applicant's relationship and his reporting of his foreign contacts: Applicant had established a "pen pal" relationship with the Russian national in May 1998; had reported her visit in July 1999; and had completed an updated SF 86 package in ay 2000 listing her as an associate living in Russia and annotating their likely marriage later in the year. (*See* Ex. 3)

Applicant's special program access was suspended in December 2000 because of his marriage to a foreign national and failure to adequately notify the SSO in advance of the marriage. Under the impression that the suspension was routine pending the results of an investigation, Applicant became concerned that it was his case that led the SSO manager to mention recent problems involving marriage to non-U.S. citizens during a security briefing. In March 2001 the head of company A's SSO informed Applicant he had reported events timely, but that the annotation of possible marriage in update of his SF 86 in May 2000 "was not considered as an actual report of intended marriage to a non-U.S. citizen." Consequently, the SSO did not initiate the report to the holder of his SCI. She also assured him that there had been

several cases similar to his in the last few months so they were using the information to raise awareness of their employees.

On January 4, 2002, Applicant was interviewed by a DSS about his foreign-born spouse and her family members living in Russia. Applicant admitted using his work computer to correspond with his spouse before she came to the U.S. in July 2000. Informed by the DSS agent that his special access was suspended at least in part because of his failure to notify the SSO of some life event, Applicant maintained he had been told the suspension was because of his marriage to a foreign national, and that he had reported his relationship in a timely and efficient manner.

In early March 2002, Applicant again requested clarification from his SSO as to whether he was correct in his understanding that his clearances had been suspended as an administrative action due to his marriage to a non-US citizen rather than a failure to notify of a life event (his marriage). The SSO responded that his top secret clearance had not been suspended, but his SCI access had been "because of his marriage to a foreign national without having notified the Government in advance of the marriage." The head of company A's SSO notified Applicant that she found no report of an impending marriage in his file. Concerned that the SSO was now taking the position that he had not met his reporting requirements, Applicant got his associate department head involved to ensure that all necessary reports were filed with the SSO.

As of April 2004, Applicant's spouse was still a permanent resident alien. Her alien card was extended for one year from June 2003 by the U.S. Immigration and Naturalization Service. Applicant and his spouse have a daughter born to them in the U.S. in November 2001. Applicant's spouse speaks to their daughter in Russian.

After her arrival in the U.S., Applicant's spouse volunteered for a local cable television access channel and at the local school. Since their daughter's birth, Applicant's spouse has not worked outside the home. Before she came to the U.S. in July 2000, she was employed as the director of weekly business and medical documentary programs for a privately owned television station from 1993 to 1999 in her native city in Russia. From 1998 to 2000, she also worked as a public relations specialist for the local tax office. As of November 2000, she still had contact with one of the employees of the tax office.

Applicant's spouse has six siblings (two half-brothers and four sisters) who are currently resident citizens of Russia. Applicant's spouse has no contact with her half-brothers, who are retired. Applicant's spouse has a close relationship with one sister who was a public school teacher in the past. As of April 2004, this sister was self-employed as an English language instructor giving lessons out of a condominium owned by Applicant's spouse. This sister also provides foreign language courses for an oil company. Applicant's spouse telephones this sister about once per week. Applicant speaks to this sister-in-law about twice per year, although he also corresponds with her by electronic mail, occasionally sending her news articles and jokes. Applicant's spouse sends her sister approximately $100 each year to purchase birthday gifts for family members and $200 at Christmas, $50 for each of her four sisters. Applicant sometimes calls another sister, but the other two do not have telephones. Applicant's spouse traveled to Russia in April 2001 to see the sister to whom she is closest and also an elderly aunt. Applicant has never been to Russia.

Applicant's spouse's condominium in Russia is worth at most $10,000 US, less than 2 percent of Applicant's financial assets in the U.S. Applicant's spouse inherited the condominium on her mother's death. She is willing to sell it but has taken no steps to do so. As of April 2004, her nephew (the son of the sister to whom she is closest) was living in the condominium and paying the monthly fees. Applicant's spouse had been sending her sister about $200 a year to maintain the apartment before her nephew moved in. A graduate of tank engineering school, he is currently in the Russian military in the hopes of getting a free apartment.

Applicant's spouse has two Russian friends living in the U.S. whom she contacts once every two months. She has known them for about 25 years since they attended the university together in Russia. Both work for an international bank.

Applicant has received several letters of appreciation over the years for his work in support of force protection and also more recently homeland security. A coworker of his for the past seven years attests to Applicant's professionalism and ability to properly safeguard sensitive information. The associate department head, who has worked with or managed Applicant for the past ten years, has observed him "to always faithfully perform his duties consistent with the security

requirement for handling classified information." In April 2002, this manager became involved at Applicant's request in ensuring that all necessary reports have been filed with the SSO and that Applicant was cooperating with the DSS in its investigation. He has no reservations in recommending Applicant for a position of continued trust and considers Applicant to be a vital member of the department. Another associate department head who has worked with Applicant for the past five years has found Applicant to be "open and forthright" with peers and managers alike and to possess a consistent knowledge of security requirements for their various work programs. The manager of a classified lab at company A also attests to Applicant's adherence to the policies and procedures involving the handling of classified material and information.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

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 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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;

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

E2.A2.1.2.3. Relatives, cohabitants, or associates, who are connected with any foreign government.

E2.A2.1.2.4. Failing to report, where required, associations with foreign nationals.

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

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

CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guideline B:

Under the Foreign Influence guideline, a security concern may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she is bound by affection, influence, or obligation, are not citizens of the U.S. 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 if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

Applicant is married to a Russian citizen whom he met through a website of potential brides in Russia. She has two half-brothers and four sisters who are resident citizens of Russia, including one sister with whom she shares a close bond of affection. Applicant's spouse telephones this sister about once per week, and she allows her sister to use and manage a condominium that she inherited on the death of their mother. This sister's son, who was residing in the condominium as of April 2004, graduated from a tank engineering school and is currently in the Russian military. There is also some indication that Applicant as of November 2000 was still in contact with at least one person from the Russian tax office where she worked before she came to the U.S. in July 2000 to marry Applicant.

The DOHA Appeal Board has held it reasonable for the Administrative Judge to consider the significance of an Applicant's spouse's ties to a foreign country and the possible effect they may have on an Applicant's contact under Guideline B (*see* ISCR 01-02452, November 21, 2002). In determining Applicant's suitability for continued access, disqualifying conditions 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.A2.1.2.2., *sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for foreign adverse influence or duress exists*, are clearly pertinent. Moreover, since Applicant's nephew by marriage is currently in the Russian military, E2.A2.1.2.3. *Relatives, cohabitants or associates who are connected with any foreign government*, must also be considered.

Foreign Influence concerns may also be raised where an individual is concealing contacts with foreign nationals (*see* E2.A2.1.2.4. *Failing to report, where required, associations with foreign nationals*), or is engaged in conduct that increases vulnerability to coercion, exploitation, or pressure by a foreign government (*see* E2.A2.1.2.6.). Since he had top secret clearance with SCI access, Applicant was required to report, among others, any change in marital status or cohabitation, intended marriage or cohabitation with a foreign national, and close and continuing foreign contacts.[(4)] Shortly after he began to correspond with his spouse, Applicant notified his employer in writing in May 1998 that he had established a pen pal relationship with a Russian national. He filed a second notice of foreign contacts in July 1999, eleven days before she was scheduled to stay with him, notifying the SSO of her impending visit. By late 1999, their relationship had progressed to where they were discussing marriage. Applicant submitted no further written notice of foreign contact, but sometime in the Spring of 2000, verbally notified the SSO of his intent to marry his spouse sometime later that year and he annotated a May 2000 SF 86 to that effect. There was no further effort by Applicant to notify the SSO until after the marriage took place in September 2000, and Applicant's SCI access was suspended for failure to provide adequate notice of the marriage.

While Applicant was up-front with the SSO about his initial contacts with his spouse, his relationship with this foreign national had certainly gone beyond that of pen pal as of late 1999/early 2000. An individual is not a pen pal one day and a fiancee the next. The Government's concerns about his failure to notify the SSO about the nature of his relationship that winter are well founded. However, after his initial decree of divorce, Applicant went down to the SSO and notified in person of his intent to marry his spouse later that year. The SSO administrative assistant corroborated she was advised by DSS that formal notification to DSS should wait until the marriage was finalized. Failing to appreciate the distinction between the report required to conduct an investigation and the need to notify special programs of the foreign contact, neither Applicant nor the SSO filed a written report of his impending marriage. Operating under the mistaken assumption that he had adequately notified the SSO, Applicant also did not file a report of his cohabitation with his spouse from July 2000 on, even though the requirement to report is clear.

Unquestionably, Applicant had not complied with the reporting requirements for employees with special access, but I am persuaded there was no intent on his part to conceal his relationship with the foreign national. Mitigating circumstances exist in that the SSO bears some responsibility for Applicant's belated report. There is no indication that Applicant was told in Spring 2000 that his annotation of his May 2000 SF 86 to reflect his intent to marry a foreign national was not sufficient to prompt a SSO report of the intended marriage to the base special programs office. Following a briefing where an SSO manager mentioned marriage with non-U.S. citizens being a recent problem, the head of the SSO informed Applicant in March 2001 that his report of events had been timely, albeit not considered an "actual report of intended marriage to a non-U.S. citizen," and that there had been several similar cases in the last few months. This raises questions as to the adequacy of employee briefing or training as to the reporting responsibilities regarding marriage to foreign nationals. The wisdom of Applicant's involvement with a Russian national whose background he could not easily verify is debatable,[(5)] as is his use of his work computer to cultivate their relationship, but marriage to a foreign national is not per se disqualifying and the Government has not shown that he violated any policy of his employer by using his work computer in this way. SOR subparagraph 1.e. is resolved in Applicant's favor.

As to the potential risk of undue Foreign Influence because of the Russian citizenship and residency of Applicant's spouse's siblings and her nephew, these security concerns may be mitigated where it can be determined that the 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 Applicant to choose between loyalty to the family member and the United States (*see* E2.A2.1.3.1.). The sister to whom Applicant is closest is not employed by the Government. While her son is in the military following his graduation from tank engineering school, the record does not establish that he has ever been an agent of a foreign government, security or intelligence service. Applicant's spouse worked in a government tax office in a public relations capacity before she came to the U.S. Whether or not she personally espoused or supported the aims of the Russian government, her official duties would have been in furtherance of its interest. Yet from the grant to her of a visa for entry into the U.S. and more recently the continuation of her permanent resident alien status, it is reasonable to infer that the U.S. officials found nothing in her background or activities that would indicate she was a foreign agent. Although Applicant was still in contact with one person from the Russian tax office as of November 2000, there is no evidence of any ongoing contact at this time.

The analysis does not end with a determination that Applicant's relatives are not agents of a foreign power. The risk of

undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through the foreign relations. There is no evidence that Applicant or his spouse has a close personal relationship with the nephew who is in the Russian military, although the risk of undue Foreign Influence cannot be completely discounted since he is the son of a sister to whom Applicant's spouse is especially close. Applicant has maintained that in the event of any undue Foreign Influence, he would immediately report the improper contact to company A's security office or the FBI. Certainly, less weight can be given to necessarily speculative testimony as to what one would do under a particular set of circumstances that have yet to be tested, but Applicant has a proven track record of contributions to the national defense in the areas of homeland security and force protection and compliance with the procedures for handling and safeguarding classified information. Those who have had the opportunity to work with and manage him over the past five to ten years have no reservations about continuing his security clearance despite his marriage to a foreign national. SOR subparagraphs 1.a., 1.b., and 1.d. are resolved in his favor.

His spouse's ownership of the condominium in Russia is seen as presenting even less of a risk. It is of minimal value financially when compared with Applicant's assets in the U.S. and his spouse has expressed a credible willingness to sell it. SOR subparagraph 1.c. is likewise found for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the 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 Applicant. Clearance is granted.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. Applicant testified he notified the SSO in February 2000 of his intent to marry the foreign national. The administrative assistant had less than a full recollection, but she testified to her belief his notification was around the time of a periodic reinvestigation of his clearance, a process that was started in March or even April 2000. When testifying as to when he and his spouse began to discuss marriage, Applicant responded it was sometime in mid-winter, but he was still going through his divorce. He would not have been free in his mind to make an offer of marriage until his initial decree of divorce, which he indicated was in early January 2000. On his SF 86, Applicant listed April 2000 as the date of his divorce from his first wife.

3. This advice is consistent with the testimony of the DSS agent who explained the required form 562 notifying DSS of a change in Applicant's marital status would be filed after the marriage because the DSS cannot investigate the spouse's

background before the marriage. However, the DSS agent indicated the SSO should document in their own records that Applicant intended to marry a foreign national.

4. Exhibit G contains the reporting responsibilities for company A employees with special programs access. Employees are specifically advised that marriage to a foreign national will be grounds for sponsor re-evaluation of special program access. Employees are also specifically directed to notify company A's SSO well in advance of intended marriage. It is noted that there was some update as of January 31, 2001. It is unclear whether the requirement to notify the SSO well in advance was added as a result of Applicant's situation.

5. This is in light of the fact that marriage to a foreign national is grounds for sponsor re-evaluation of special program access.