

DATE: March 29, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08816

## **DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born and raised in Russia. She immigrated to the United States in 1989 and has lived here for approximately 15 years. She received her college degree from a U.S. university. Both Applicant and her husband are naturalized U.S. citizens since 1995. Her husband is also a resident of the U.S. and their children are citizens and residents of the U.S. Applicant is not vulnerable to foreign influence because of her strong attachment to the U.S., which includes extensive personal, professional, and economic ties. Her family is not in a position to be exploited in Russia in a way that could force Applicant to choose between loyalty to her family members and her allegiance to the U.S. Clearance is granted.

### **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 May 25, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline B (Foreign Influence).

In a sworn, written statement dated June 10, 2004, Applicant responded to the allegations set forth in the SOR and elected to have her case decided on the written record in lieu of a hearing. Department counsel submitted the government's written case on August 2 2004. A complete copy of the file of relevant material (FORM) <sup>(1)</sup> was provided to Applicant and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted additional documentation on September 7, 2004. Department counsel offered no objection to those materials. The case was assigned to another administrative judge on October 7, 2004 but reassigned to me on February 1, 2005 due to caseload considerations.

### **FINDINGS OF FACT**

Applicant admitted in part each of the factual allegations contained in the SOR and offered mitigating circumstances; however, she denied the allegations in ¶ 1.c. 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 findings of fact:

Applicant is 37 years old and was born and raised in Russia.<sup>(2)</sup> She immigrated to the United States in 1989.<sup>(3)</sup> Applicant graduated from a U.S. university in 1994.<sup>(4)</sup> She became a naturalized U.S. citizen on November 17, 1995.<sup>(5)</sup> She has been in the U.S. almost 15 years.<sup>(6)</sup> Applicant has been with her current employer since 2003 and she is seeking a security clearance.<sup>(7)</sup>

Although married in Russia, her husband is a resident and naturalized citizen of the U.S.<sup>(8)</sup> Her two children are U.S. citizens and residents.<sup>(9)</sup>

Applicant's father is a 62-year-old citizen of Russia and resides with her and her family in the U.S.<sup>(10)</sup> Her father officially retired on November 11, 2002.<sup>(11)</sup> He was employed by a Russian petroleum company in St. Petersburg, Russia. He occasionally goes to Russia as a consultant for his former employer. The consulting is related to the technological processes for oil refining.<sup>(12)</sup> Applicant's mother is deceased.

Applicant's 80-year-old mother-in-law resides with Applicant and her family. On January 15, 2004, her mother-in-law became a naturalized U.S. citizen.<sup>(13)</sup> Her mother-in-law has short-term memory loss and has limited contact with the outside world.<sup>(14)</sup> Applicant's father-in-law is deceased.

Applicant visited Russia from July to August 1999; this was her first visit to Russia since she immigrated here in 1989.<sup>(15)</sup> The purpose of her trip was to visit her mother's grave.<sup>(16)</sup>

Based on the available evidence, neither her father nor her mother-in-law has connections to the Russian government, military, or security services. Applicant has no family members that live in Russia all year.

Applicant has no property or financial interests outside the U.S.<sup>(17)</sup> Applicant has substantial assets in the United States, including a residence and financial investments.<sup>(18)</sup> She stated: "[w]e can admit that all our family achievements in personal and professional life is a result of realized opportunities generously given to us by the Unites (sic) States, and we are very thankful for it."<sup>(19)</sup>

Applicant has no ties to any country other than the United States. She stated, "[w]e can admit that all our family achievements in personal and professional life is a result of realized opportunities generously given to us by the United States, and we are very thankful for it."<sup>(20)</sup>

## **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. <sup>(21)</sup>

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.

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:

Under ¶ E2.A2.1.2.1 of the Directive, it may be a disqualifying condition if *an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.* Under ¶ E2.A2.1.3.1, *immediate family members* is defined to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant has only one immediate family member, her father, a retired chemical engineer in the oil refining industry, who is a citizen of Russia. However; his home is in the U.S., where he lives with Applicant and her family. He occasionally travels to Russia on business, as a consultant. Her mother-in-law is a naturalized U.S. citizen,

and is a citizen of Russia, resides with Applicant and her family in the U.S. Her mother-in-law no longer resides in or visits Russia. Under ¶ E2.A2.1.1, these circumstances *could create the potential for foreign influence that could result in the compromise of classified information*. Under the circumstances, I conclude this potentially disqualifying condition does not really apply because Applicant's mother-in-law is basically housebound in the U.S. and has no ties with Russia. Applicant's father spends the majority of each year at her house with the occasional visit to Russia on business. It does not appear that either Applicant's mother-in-law or father are in a position that "could create the potential for foreign influence that could result in the compromise of classified information." (22)

Under ¶ E2.A2.1.2.2, it may be disqualifying where an applicant *shar[es] living quarters with a person . . . if the potential for adverse foreign influence or duress exists*. Applicant's mother-in-law, an 80-year-old naturalized U.S. citizen with short-term memory loss, lives with Applicant and her family. Her mother-in-law "is barely capable of doing her daily routine." (23) However, Applicant's father is also a citizen of Russia, and he travels to Russia on occasion to conduct business. His primary residence is in the U.S. with Applicant's family and he lives in the U.S. the major portion of each year. The fact that (1) Applicant's father resides in the U.S. for a substantial part of each year and (2) her mother-in-law lives in the U.S. year round, greatly reduces the possibility a foreign power could improperly influence or exert pressure on either of them. Under the circumstances, I find this potentially disqualifying condition does not apply.

Similarly, pursuant to ¶ E2.A2.1.2.3, it may be disqualifying where (*[r]elatives . . . are connected with any foreign government*). The record in this case does not indicate that any of Applicant's family in Russia are connected with the government of Russia. Thus, I find this potentially disqualifying condition does not apply.

Security concerns arising from possible foreign influence may be mitigated under certain circumstances. These security concerns may be mitigated where it is determined that *the immediate 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 the individual to choose between loyalty to the person involved and the United States*. (24) In analyzing whether a foreign associate is in a position of vulnerability, it is appropriate to assess the nature of the foreign country. It is common knowledge that, although not as hostile to the U.S. as the Soviet Union was, Russia continues to operate an aggressive intelligence service that actively seeks access to U.S. secrets. Russia has assisted the U.S. in mediating international conflicts and is an ally in the war on terrorism. While its human rights record has improved since the demise of the Soviet Union, violence and human rights abuses are again on the rise. (25) None of Applicant's relatives are employees or officers of the government. (26) There is no evidence indicating any one of them is an "agent of a foreign power." (27) The possibility that a "foreign power" would attempt to exploit or pressure Applicant's relatives in Russia to force Applicant to act adversely to the interests of the U.S. is limited. Her father is retired and resides in the U.S. during a substantial portion of each year, minimizing his vulnerability. Because of her health and mental capacity, her mother no longer visits Russia. Under these circumstances, Applicant's relatives in Russia are not especially vulnerable to adverse influence by a "foreign power." I find that this potentially disqualifying condition does not apply.

Applicant has extensive ties to the United States. Applicant has lived in the U.S. for the past 15 years. Her husband and children are citizens and residents of the U.S. She works at a profession that she enjoys here in the U.S. Moreover, she has worked for defense contractors since graduating with her bachelor's degree without any adverse incidents. Her residence is here in the U.S. and she has other financial investments here. Considering the extent of her ties to the United States, I find Applicant is not vulnerable to pressure or duress through her relatives in Russia.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. Applicant is a mature individual who has spent the majority of her adult life in the United States. The personal, professional, and economic ties that bind her to the United States far outweigh her connections with one relative, her father, who travels to Russia on occasion. I conclude Applicant has mitigated any potential security concerns arising from Applicant's family ties in Russia.

### **FORMAL FINDINGS**

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

### **DECISION**

In light of all of 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.

Jacqueline T. Williams

Administrative Judge

1. The government submitted seven items in support of its contentions.
2. *Id.*
3. Electronic version of Security Clearance Application (SF 86), dated February 10, 2003.
4. *Id.*, at 1.
5. *Id.*
6. Item 3, *supra*.
7. Electronic version of SF 86.
8. *Id.*
9. Sworn Statement, *supra*.
10. Item 3, *supra*.
11. *Id.*
12. *Id.*
13. *Id.*
14. Sworn Statement, *supra*.
15. *Id.*
16. Item 3, *supra*.
17. *Id.*, at 2.
18. *Id.*, at 2.
19. Sworn Statement, *supra*.

20. Sworn Statement, *supra*.

21. Directive, ¶ E2.A2.1.1.

22. Directive, ¶ E2.A2.1.1.

23. Sworn Statement, *supra*.

24. Directive, ¶ E2.A2.1.3.1.

25. Item 5, U.S. Department of State, *Background Note: Russia*, dated April 2004, at 5.

26. *Id.*

27. *See* 50 U.S.C.A. § 1801(b).