

DATE: May 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08813

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In June 2002, Applicant, an American citizen by birth, married a Russian citizen with whom he still lives. Applicant's wife maintains regular contact with her mother, father, and brother, who are all Russian citizens and still live there. Her father is a retired Russian military officer and her brother still serves as a colonel in the Russian army. Applicant has failed to mitigate the security concerns under Guideline B arising from his ties of affection with foreign citizens. Clearance is denied.

STATEMENT OF THE CASE

On April 21, 2004, the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline B (Foreign Influence). The SOR informed Applicant that, based on investigative information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On May 10, 2004, Applicant responded to the SOR (Answer) and requested a hearing. The case was assigned to me on October 12, 2004, and I convened a hearing in this matter on February 1, 2005. [\(2\)](#) The parties appeared as scheduled and the government presented seven substantive exhibits (GE 1 through 7), which were admitted without objection. The government also proffered four documents for administrative notice (GE 8 - 11), and after hearing comments and objections from Applicant, I agreed to consider them for informational purposes. Applicant presented eight exhibits (AE A - H), which were admitted without objection. Applicant also presented his own testimony and that of three other witnesses. DOHA received the transcript (Tr) on February 9, 2005.

FINDINGS OF FACT

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

Applicant was born in the United States and is currently employed by a defense contractor as a program manager working in software development. He served in the U.S. Army from 1971 until his retirement as a lieutenant colonel in 1992. During his military career, Applicant first served in the Airborne Ranger forces, but later switched to a specialty in logistics support and planning with the Quartermaster Corps. Applicant received the Bronze Star for his service in Operation Desert Storm, and has received other awards, including three meritorious service medals. After retiring from the Army, Applicant worked for three other defense contractors before being hired by his current employer in March 2000. Applicant has held a security clearance since 1971.

Several high ranking Army officers and officials in private industry, who have known Applicant for several years, have enthusiastically recommended him for continued access to classified information. All of the references provided, as well as the witnesses who testified at hearing, feel Applicant is trustworthy, reliable, patriotic, and a man of great integrity.

Applicant was married from 1986 until his divorce in March 2001. In June 2002, he married a Russian woman he met through an on-line matchmaking service. She has a daughter through a previous marriage (this is her third marriage). Applicant has adopted his stepdaughter, and his wife gave birth to a second child in February 2004.

Applicant and his wife first began corresponding via e-mail in August 2001. The couple first met in person when Applicant traveled to Moscow in January 2002. Applicant returned to Russia that same month to get to know her better, and again in March 2002 to meet her parents, propose marriage, and arrange to bring his new wife and stepdaughter to the United States. They arrived here in May 2002. Soon thereafter, Applicant's wife and stepdaughter began the process of becoming U.S. citizens. They are now permanent resident aliens and eligible for U.S. citizenship in 2006.

Applicant's mother- and father-in-law are Russian citizens who still live in that country. He is a retired Soviet Army officer who was unceremoniously retired from active duty in 1983. He is now elderly, socially reclusive, and in failing health. The mother-in-law is a retired utility worker. Applicant's wife calls her parents about twice monthly. Applicant's wife returned to Russia for a visit in June 2003, and her mother visited the United States in October 2004.

Applicant has never met his brother-in-law, a lieutenant colonel in the Russian army teaching at a military university. Applicant's wife speaks with her brother about four times annually.

Applicant also had monthly on-line contact with another Russian citizen, the man who ran the matchmaking service. However, this contact ceased sometime in early 2002 when Applicant no longer had need of the service. In early 2003, Applicant also corresponded by e-mail with a retired Russian military officer living in the United States as a permanent resident alien. Applicant's wife met this person through their church. Applicant helped him edit his resume and gave him advice in his job search. Applicant never met this person and has had no contact with him since February 2003.

Since the fall of the Soviet Union, Russia and the United States have had closer, less adversarial relations. However, the interests of the two nations are still often times at odds with each other. Russia still aims much of its intelligence resources at the United States and actively operates in all major aspects of intelligence collection and exploitation.

The Russian government can now be characterized as more democratic than the Soviet regime; however, the executive branch generally wields considerable power unchecked by either the legislative or judicial branches. It is not surprising, then, that Russia's human rights record has not improved in the past 15 years. As a result of rampant organized crime, lack of law enforcement, and government corruption, average citizens in Russia are often subjected to crimes of extortion and outright theft by both criminals and government officials alike.⁽³⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽⁴⁾ to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they

represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, specifically, that Applicant has close ties of affection who are foreign citizens, I conclude the relevant adjudicative guideline to be applied here are Guideline B (Foreign Influence).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁵⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁶⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁷⁾

CONCLUSIONS

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.⁽⁸⁾

The government has established a *prima facie* case for disqualification under Guideline B. Applicant's wife and older daughter, as well as his wife's parents and brother are still Russian citizens. Guideline B disqualifying condition (DC) 1⁽⁹⁾ applies. His wife's family still lives in Russia, and, because there is a rebuttable presumption that Applicant has ties of affection or obligation to his wife's immediate family,⁽¹⁰⁾ DC 2⁽¹¹⁾ also applies here. Lastly, DC 3⁽¹²⁾ applies because Applicant's brother-in-law is a senior Russian military officer. An overarching consideration in applying these disqualifiers is that Russia has a poor human rights record, little effective law enforcement, rampant organized crime and government corruption, and maintains an aggressive intelligence stance toward the U.S. These circumstances make it more likely than not that a Russian citizen with ties to an American holding a security clearance would be targeted for coercion in furtherance of hostile intelligence gathering efforts against the U.S.

None of the listed mitigating conditions (MC) apply here. MC1⁽¹³⁾ fails because Applicant's brother-in-law is a senior officer in the Russian military, clearly an agent of a foreign power. Even without this official connection⁽¹⁴⁾ to the Russian government, common sense dictates that the current state of Russian society and the Russian government's intelligence activities present a heightened risk that Applicant's in-laws are vulnerable to pressure or coercion intended to leverage Applicant's access to classified information. MC 3⁽¹⁵⁾ applies only to the allegations in SOR ¶1.f and ¶1.g. There has been no contact with those persons in two to three years, and the contact was casual at best. However, Applicant's wife still maintains regular contact with her parents and, to a lesser degree, with her brother. Applicant's wife has returned to Russia at least once to visit her family and her mother has visited here in the past year. None of the other listed mitigators are relevant to these facts.

As for the allegation in SOR ¶1.b, these facts have been established but have little or no independent security significance. As an allegation, it is neither disqualifying nor mitigating. It is simply a statement of fact that is part of the record as a whole and serves little adjudicative purpose.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under Guideline B. A fair and commonsense assessment⁽¹⁶⁾ of the record before me reflects Applicant's long and distinguished service to this country, which cannot be overlooked or overstated. He is an accomplished military officer

and has continued his service by applying his experience in the private sector in support of Army and other DoD efforts. The record also reflects his recently changed personal circumstances. His suitability to continue to hold the clearance he has held for most of his adult life has been appropriately reexamined in light of his new ties of affection or obligation to foreign citizens. Applicant's background now presents an unacceptable risk that Applicant is vulnerable to coercion via foreign influence.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

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

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Pre-existing travel and caseload requirements precluded scheduling this hearing in a more timely fashion.
3. GE 8, GE 9, GE 10, GE 11.
4. Directive, Enclosure 2.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, E2.A2.1.1.
9. Directive, E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
10. Appeal Board Decision, ISCR Case No. 01-03120 (February 20, 2002).

11. Directive, E2.A2.1.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
12. Directive, E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government;
13. Directive, E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;
14. The fact Applicant's father-in-law is a retired military officer does not, in the context of this record, constitute an official agency relationship with the Russian government. He has been retired from the military more than 20 years and has no apparent governmental ties, other than receipt of his retired pay. (SOR ¶1.d)
15. Directive, E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;
16. Directive, E2.2.3.