

KEYWORD: Foreign Influence

DIGEST: Applicant, a natural born United States citizen, married a Russian woman in November 1998 whom he met through a friend whose wife was teaching at a university in Moscow. Applicant now resides with his wife who became a naturalized U.S. citizen in July 2004. Her father and sister are citizens and residents of Russia, and she has traveled to Russia to visit them on a number of occasions since she immigrated to the United States. Applicant has failed to mitigate the foreign influence security concern that exists in this case. Clearance is denied.

CASENO: 03-14548.h1

DATE: 01/26/2005

DATE: January 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14548

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a natural born United States citizen, married a Russian woman in November 1998 whom he met through a friend whose wife was teaching at a university in Moscow. Applicant now resides with his wife who became a naturalized U.S. citizen in July 2004. Her father and sister are citizens and residents of Russia, and she has traveled to Russia to visit them on a number of occasions since she immigrated to the United States. Applicant has failed to mitigate the foreign influence security concern that exists in this case. Clearance is denied.

STATEMENT OF THE CASE

On May 18, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on June 4, 2004, admitted some and denied other SOR allegations, and requested a hearing.

The case was assigned to me on September 10, 2004. A notice of hearing was issued on November 4, 2004, scheduling the hearing for December 3, 2004. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5. GE 1 was admitted into the record, and administrative notice was taken of the information contained in GE 2-5 without objection. Applicant testified, and called his wife and a friend to testify on his behalf. The transcript was received on December 9, 2004.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 58-year-old man who has been employed by a defense contractor as a system engineer since August 1998. He was previously employed as a system engineer by a different defense contractor from January 1990 to October 1997, and was unemployed from November 1997 to August 1998. Applicant enlisted in the U.S. Air Force in July 1967, obtained a commission after approximately seven years of service, and retired as a major in July 1988. Applicant had a top-secret security clearance, frequently with sensitive compartmented information access, from about 1967 until 1997. No complaints were ever made alleging he had mishandled or compromised classified information, and no action was ever taken to revoke or downgrade his clearance other than for solely administrative purposes.

Applicant first married in December 1966, and that marriage ended in divorce in October 1984. He has two sons, ages 36 and 32, and one daughter, age 29, from that marriage. Applicant married his present wife on November 28, 1998. He resides with her in a house that he has owned since October 1991.

Applicant met his wife through a friend he had known in the Air Force who is still on active duty. The friend's wife began teaching at a university in Moscow in 1992, and one of her first students was the woman who would become Applicant's wife. The friend, while serving as a military attache in a country other than Russia, visited his wife in Russia who arranged for the woman to act as his tour guide. The friend and his wife, apparently deciding Applicant and the woman would make a good couple, played matchmaker and arranged for Applicant to spend time showing the woman the sights when she visited the U.S. in August 1997.

Applicant notified his employer of his actions, and then spent two days escorting the woman on sightseeing excursions during her visit. They corresponded by telephone and e-mail on a frequent basis after she returned to Russia, apparently leading her to visit the U.S. and Applicant again in approximately December 1997. She then returned to Russia, they continued to correspond, and she again visited Applicant in the U.S. in about May 1998. Following that visit she again returned to Russia where she resided until immigrating to the U.S. to marry Applicant in either October or November 1998.

Applicant's wife was a Russian citizen, and was employed as a lecturer at a university in Moscow when they met. She taught English, and before that chemistry, at the university. Her father, two sisters, and three nephews all were citizens and residents of Russia at the time of the marriage. Her father is presently 85 years old. He served in the Russian Army during World War II, and received severe wounds that resulted in the amputation of one of his legs. Some time after the war he worked as a civil servant, and then he began teaching at a military university in Russia, where he worked until he retired in approximately 1992. He has traveled to the U.S. twice to visit Applicant and his wife, once in July 1999, and again in December 1999. Applicant's wife speaks with her father on a somewhat frequent, albeit irregular, basis that she describes as sometimes twice a month and then maybe not for three months.

Both of Applicant's Russian sisters-in-law came to the U.S. in 1998 for the wedding. One of those women was subsequently diagnosed with cancer,

and came to the U.S. to seek treatment. She resided with Applicant and his wife until the time of her death. Applicant's remaining sister-in-law and two of his nephews, the children of the deceased sister-in-law, came to the U.S. to attend the funeral. They returned for a visit in 2002.

Applicant's wife has returned to Russia on a number of occasions since the marriage. He estimates she returned six to seven times, annually at first, and twice a year for the last three to four years. She estimates she has visited Russia a total of four to five times since moving permanently to the U.S. She last visited Russia in May 2004 for ten days, and before that in December 2003 for four weeks. She speaks with her sister and nephews by telephone about every other week. Applicant testified his wife also maintains contact with a dean at the university in Moscow, friends in Russia, and other Russian citizens who are in the U.S.

Applicant's wife owns an apartment and a parking space in Russia. He places the value of the apartment at \$20-40,000.00, and the parking space at \$3,000.00. She values the apartment at \$50,000.00, and the parking space at \$3,000.00. The apartment space is rented to a student for \$125.00 per month, with the money going to Applicant's sister-in-law to help provide for the children of the deceased sister. Applicant's father-in-law uses the parking space. Applicant's wife sends other money and items to her family in Russia, and the estimate of her total contribution to her relatives in Russia, including the apartment rent, is approximately \$2,500.00 annually.

Applicant's wife became a naturalized U.S. citizen on July 30, 2004. She has not taken any action to renounce her Russian citizenship, and has not applied for a U.S. passport.⁽²⁾ She is employed as a lecturer at a major state university in the chemistry department.

Applicant estimates he has \$200-300,000.00 equity in his house that he values at about \$550,000.00. He has something less than \$200,000.00 in two 401K accounts, his wife has about \$50,000.00 in a 401K account, and they have approximately \$5,000.00 in a savings account.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁵⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Foreign Influence. 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.

Based upon the allegations in the SOR, Disqualifying Condition (DC) 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*; DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists*; and DC 8: *A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B:

DC 1 and 2 both apply in this case because Applicant's wife maintains dual citizenship with Russia, and her father and sister are citizens and residents of Russia. His wife's frequent telephone contact with her sister, nephews, and father, and her travel to Russia, and her relatives travel to the U.S. demonstrate the close ties of affection she has with those individuals, and Applicant's vicarious obligation to them. DC 8 applies based upon the property Applicant's wife owns in Russia.

Once the government meets its burden of proving controverted facts⁽¹³⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹⁴⁾ Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.⁽¹⁵⁾

The following Mitigating Conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or

continue a security clearance for Applicant under Guideline B: MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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;* MC 3: *Contact and correspondence with foreign citizens are casual and infrequent;* and MC 5: *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.*

There is no evidence to permit finding that Applicant, his wife, and his in-laws are not in a position to be exploited by Russia. Her family members are citizens and residents of that country, and she has traveled to Russia as recently as the May 2004. Based upon the past travel history it is reasonable to expect that Applicant's wife will likely travel to Russia in the future. Their presence in Russia places them in the position to be exploited by the Russian government.

In considering the possibility of exploitation by the Russian government it would be foolhardy to ignore the history of espionage committed against the U.S. by the Soviet Union and Russia that continued long after the downfall of the Soviet Union, as evidenced by the arrest of an FBI agent in 2001 as he attempted to pass classified documents to Russian agents. MC 1 is inapplicable in this case.

As discussed above, Applicant's wife's contacts with her father and sister in Russia are clearly indicative of the continuing close relationship she has with them. Her contact is neither casual nor infrequent, and, accordingly, MC 3 does not apply.

Applicant's wife placed the value of the property she owns in Russia at \$53,000.00. She clearly is in a better position to evaluate that property than the somewhat lower figure supplied by Applicant, and, accordingly, that is the value I will use. Applicant estimates the equity value of his house, his savings, and his and his wife's retirement accounts to be in the neighborhood of \$455-555,000.00. Adding in some value for automobiles, furniture, and the like still leaves the value of the property in Russia at as much as 10% of their net worth. The value of the property in Russia cannot be said to be minimal or insufficient to affect an individual's security responsibilities, either standing alone or as a percentage of the family assets. Accordingly, MC 8 does not apply.

Security clearance eligibility decisions are determinations in terms of the national interest,

and are in no sense a determination of the loyalty of the applicant. There is no reason to question Applicant's or his wife's loyalty to the United States. However, in all adjudications the protection of our national security is the paramount concern, and the ultimate question to be answered is whether it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I am unable to conclude that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against 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 Applicant. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. "Unless a former Russian citizen has formally renounced his or her Russian citizenship through a Russian Embassy or Consulate, he or she always risks being considered a Russian citizen and not allowed to depart on any travel document except a Russian passport. This can also interfere with access to U.S. consular services in case of an emergency." GE 4 at page 4
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.
13. Directive, Additional Procedural Guidance, Item E3.1.14
14. Directive, Additional Procedural Guidance, Item E3.1.15
15. ISCR Case No. 99-0597 (December 13, 2000)