

KEYWORD: Foreign Influence

DIGEST: Applicant is a 37-year-old citizen who met and corresponded with a Russian citizen and resident via the Internet. Applicant visited Russia three times in 2002 to further their relationship and married her in 2003. Applicant's wife has family in Russia. Applicant provided financial support to his wife's family. He is planning a fourth trip to Russia in 2005. The security concerns are not mitigated by the evidence in the record. Clearance is denied.

CASENO: 04-00517.h1

DATE: 09/14/2005

DATE: September 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00517

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A LYNCH

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 37-year-old U.S. citizen who met and corresponded with a Russian citizen and resident via the Internet. Applicant visited Russia three times in 2002 to further their relationship and married her in 2003. Applicant's wife has family in Russia. Applicant provided financial support to his wife's family. He is planning a fourth trip to Russia in 2005. The security concerns are not mitigated by the evidence in the record. Clearance is denied.

STATEMENT OF THE CASE

On March 3, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant because of security concerns arising under Guideline B (Foreign Influence).

In a sworn written statement, dated March 14, 2005, Applicant responded to the SOR allegations. He elected to have his case decided on the written record, in lieu of a hearing.

Department Counsel submitted the government's File of Relevant Materials (FORM) [\(U\)](#) dated June 7, 2005. Applicant

received the FORM on June 17, 2005, and was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. Applicant provided a response to the FORM on June 20, 2005.⁽²⁾ The case was assigned to me on June 30, 2005.

FINDINGS OF FACT

Applicant admitted all of the factual allegations pertaining to foreign influence under Guideline B (subparagraphs 1.a through 1.d).⁽³⁾ Those admissions are incorporated 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, a 37-year-old U.S. citizen, is seeking to retain a security clearance in conjunction with his employment.⁽⁴⁾ Applicant met his third wife on the Internet and traveled to Russia three times in 2002 to further the relationship.⁽⁵⁾ Applicant married his wife, a native-born Russian citizen, in the U.S. in 2003.⁽⁶⁾ Applicant and his wife intend to visit Russia again in 2005.⁽⁷⁾ She is a conditional permanent resident of the U.S.⁽⁸⁾

Applicant's wife maintains frequent telephone and Internet contact with her friends and family in Russia. Applicant's mother-in-law is a citizen and resident of Russia.⁽⁹⁾ She is ill and does not travel.⁽¹⁰⁾ Applicant's mother-in-law owns several properties in Russia. She has farm land that she rents for income. Applicant's mother-in-law lives on the rental income and her pension.⁽¹¹⁾ Her husband is deceased. Applicant sent \$700.00 to help with funeral expenses when his father-in-law died. Applicant and his wife did not attend the funeral.⁽¹²⁾

Applicant disclosed the intent of his first trip to Russia in his security clearance application. His company security officer approved his trip to Russia.⁽¹³⁾

The U.S. and Russia were formerly adversaries in the Cold War. While relations between the countries improved after the fall of the Soviet Union in 1990, there are issues that remain contentious, including Russia's support of the Iranian nuclear program.⁽¹⁴⁾ 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.⁽¹⁵⁾ The U.S. State Department cautions Americans traveling to Russia that there remains a heightened potential for terrorist attacks, although Americans are not being specifically targeted.⁽¹⁶⁾

POLICIES

Enclosure two of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2 of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole people's concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept 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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹⁷⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽¹⁸⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the initial burden of proof in the adjudicative process to establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹⁹⁾ When the government meets this burden, a heavy burden of persuasion then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽²⁰⁾

Based upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

Guideline B - Foreign Influence: 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.

The Guideline B disqualifying and mitigating conditions applicable to his case are set forth and discussed in the Conclusions section below.

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:

Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*An immediate family member or person to whom the individual has close ties of affection or obligation, is a citizen, or, a resident or present in, a foreign country*), applies because Applicant's wife and mother-in-law are citizens of Russia. Although his mother-in-law is not an immediate family member, Applicant has ties of obligation to his mother-in-law through his wife. In fact, Applicant sent money to Russia when his father-in-law died. Also, Applicant intends to visit Russia for a fourth time in 2005 to visit his wife's mother. There is a rebuttable presumption that an applicant has ties of affection for, or obligations to his spouse's immediate family members. [\(21\)](#) I find that in this case there are strong ties of affection and obligation.

FI DC 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*) applies. Applicant's wife lives with him in the U.S. and has close bonds of affection with her mother. She telephones and uses the Internet for frequent communications. She stays in close touch with her friends. Thus, she has strong emotional ties with her mother and friends in Russia.

The mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. Whether an applicant's family ties in a foreign country pose a susceptibility to foreign influence depends on a common sense evaluation of the overall facts and circumstances of those family ties. [\(22\)](#)

I reviewed the Foreign Influence Mitigating Conditions (FI MC). FI MC E2.A2.1.3.1 (*A determination that the immediate family member(s) (spouse, father, mothers, sons, daughter, brothers, sisters), cohabitants or associates(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 and the person (s) involved and the United States*) does not apply. Applicant's mother-in-law, who still lives in Russia, is old and suffering from dementia. She is too ill to travel. This may make her more vulnerability to exploitation by a foreign power, including a terrorist organization. Applicant's wife now resides in the United States, reducing her vulnerability to exploitation by a foreign power. However, she has extensive contacts

with Russia and returns on visits. Thus, she is subject to Russian law governing its citizens. This could make her vulnerable to a foreign power.

FI MC E2.A2.1.3.3 (*Contact and correspondence with foreign citizens are casual and infrequent*) does not apply to Applicant and his wife. Applicant's closest family member, his wife, maintains frequent contact with her mother and friends. Applicant visited Russia three times and plans a fourth trip in 2005. No doubt during his fourth visit, he will visit his mother-in-law.

I considered the "whole person" concept in evaluating Applicant's suitability for a security clearance. I am persuaded by the totality of the evidence in this case that Applicant is vulnerable to exploitation by a foreign power. Applicant asserts he is a loyal American citizen who would not betray the U.S. The government has not alleged, and the evidence does not show, Applicant is anything but a loyal U.S. citizen. However, the issue is not his loyalty, but whether he is *vulnerable* to foreign influence that could result in the compromise of classified information.

Applicant has not met his burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him, or his burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive. Accordingly, allegations 1.a through 1.d of the SOR are concluded against Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

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.

Noreen A. Lynch

Administrative Law Judge

1. The government submitted eleven items in support of its contentions.
2. Applicant's Response to FORM, dated June 20, 2005, at 1.
3. Item 3 (Applicant's Answer to SOR, dated March 14, 2005) at 1-2.
4. Item 5 (Security Clearance Application (SF 86), dated June 7, 2002) at 1-4.
5. Applicant's Response to FORM, *supra* note 2, at 2.
6. Item 6 (Marriage Certificate, dated February 15, 2003) at 1.
7. Item 3, *supra* note 3, at 1.
8. *Id.*
9. *Id.* at 2.
10. Applicant's Response to FORM, *supra* note 3 and 5, at 1.
11. *Id.*
12. *Id.*
13. *Id.*
14. Item 11 (Congressional Research Service (CRS) Issue Brief for Congress-Russia, dated October 10, 2003) at 11.
15. *Id.*
16. Item 8 (Testimony of Director of Central Intelligence, February 16, 2005).
17. *Department of Navy v. Egan*, 484 U.S. 518, 517 (1988).
18. Executive Order 10865, Section 7.

19. ISCR Case No. 96-0277 at 2 (App. Bd. Jul, 1997).

20. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

21. ISCR Case No. 01-26893 at 9 (App. Bd. Oct. 16, 2002).

22. ISCR Case No. 98-0419 at 5 (App. Bd. Apr 30, 1995).