

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant's wife is a citizen of the Russian Federation and resides with him in the U.S. His father, half-brother, half-sister, and mother-in-law are citizens and residents of the Russian Federation. His sister is a U.S. citizen residing in the Russian Federation. After becoming a U.S. citizen, Applicant used his USSR and Russian Federation passports to travel to Russia approximately five times. After his hearing, he surrendered the passports to authorized consular officials of the Russian Federation. While Applicant mitigated his previous conduct indicating a preference for the Russian Federation over the U.S., his familial ties to citizens and residents of the Russian Federation raise serious security concerns because they could result in the compromise of classified information. Clearance is denied.

CASENO: 04-00972.h1

DATE: 12/31/2005

DATE: December 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00972

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

## **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

## **FOR APPLICANT**

John F. Mardula, Esq.

## **SYNOPSIS**

Applicant's wife is a citizen of the Russian Federation and resides with him in the U.S. His father, half-brother, half-sister, and mother-in-law are citizens and residents of the Russian Federation. His sister is a U.S. citizen residing in the Russian Federation. After becoming a U.S. citizen, Applicant used his USSR and Russian Federation passports to travel to Russia approximately five times. After his hearing, he surrendered the passports to authorized consular officials of the Russian Federation. While Applicant mitigated his previous conduct indicating a preference for the Russian Federation over the U.S., his familial ties to citizens and residents of the Russian Federation raise serious security concerns because they could result in the compromise of classified information. Clearance is denied.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 1, 2005, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing May 2, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on June 27, 2005. The parties agreed to a hearing on August 31, 2005, and a hearing was set for that date. On August 12, 2005, Applicant requested a continuance because one of his key witnesses would be unavailable to testify on August 31. Department Counsel did not object to Applicant's request. Accordingly, for good cause shown, Applicant's hearing was continued to October 12, 2005. Applicant's hearing was convened on October 12, 2005, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced three exhibits, and offered six documents for administrative notice. The Government's exhibits (Ex.) were numbered 1 through 3, and its documents offered for administrative notice were numbered I through VI. Applicant testified on his own behalf and called two witnesses. He introduced three exhibits (Ex.), which were identified as Ex. A through C. All exhibits and documents were admitted into evidence without objection. At the close of the proceeding, with the agreement of both parties, I left the record open until October 19, 2005, so that Applicant could submit additional documentation regarding the surrender of his expired USSR and Russian Federation passports. On October 13, 2005, and October 20, 2005, Applicant filed, by facsimile, documents showing he had surrendered two expired passports to the consular division of the Embassy of the Russian Federation. Department Counsel did not object to the admission of these documents. Accordingly, I marked the documents as Applicant's Ex. D and E and admitted them into the administrative record of this case. DOHA received the transcript (Tr.) of the proceeding October 20, 2005.

## FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct charged under Guideline C, Foreign Preference, and five allegations of disqualifying conduct charged under Guideline B, Foreign Influence. In his answer to the SOR, Applicant admitted the three Guideline C allegations in part, with mitigating circumstances, and he admitted the five Guideline B allegations in part with mitigating circumstances. His admissions are incorporated as findings of fact.

Applicant is 41 years old and employed as a senior software engineer by a defense contractor. (Ex. 1; Tr. 36.; 43.) He holds master's degrees from Russian and U.S. institutions. (Tr. 43.) He has worked for his present employer for approximately 15 years. (Tr. 43.) His employer considers him to be a hard-working and valuable employee. (Tr. 36-37.)

Applicant was born in the former Union of Soviet Socialist Republics (USSR). During his student years, he worked part-time for the Russian government as a computer programmer. Following his college studies, Applicant served compulsory military duty for one year. After his discharge from military service, he worked part-time as a consultant for an agency of the Russian government. (Ex. 2 at 3.) In 1989, Applicant immigrated to the U.S. He was sponsored by a U.S. citizen, whom he married<sup>(3)</sup>. (Tr. 62.) In 1993, Applicant became a U.S. citizen. (Ex. 1.) Applicant made a statement renouncing his Russian citizenship when he became a naturalized U.S. citizen. At his hearing he again stated his intent to renounce his Russian citizenship. (Tr. 48; 64.)

In 1992, while still a Russian citizen, Applicant renewed his USSR passport. After becoming a U.S. citizen, he used his USSR passport three times to travel to Russia. His USSR passport expired in 1997. In 1998, he applied for and received a passport from the Russian Federation, which he used twice to travel to Russia. (Tr. 63.) He acknowledged he had presented himself as a Russian citizen in order to obtain the passport. (Tr. 64.) Applicant's Russian Federation passport expired in 2003, and he did not renew it. (Tr. 64.) Applicant used his USSR and Russian Federation passports when he traveled to Russia as a U.S. citizen because he understood it was difficult for U.S. citizens who were former Russian citizens to timely obtain Russian visas. (Tr. 49.) He did not think his actions were illegal for someone who did not hold a security clearance. (Tr. 50.) At the time of his hearing, Applicant was in possession of his expired USSR passport and his expired Russian Federation passport. (Tr. 64.) He denied using his Russian Federation passport since 1998, and he denied any future intent to exercise or renew his Russian citizenship by obtaining a Russian Federation passport. (Tr. 48.)

At the close of his hearing, Applicant requested the record remain open so he could surrender his USSR and Russian Federation passports. (Tr. 94.) On October 13, 2005, Applicant filed documents showing his counsel had submitted a letter, addressed to the Counselor Division of the Embassy of the Russian Federation, enclosing Applicant's two expired

passports and expressing Applicant's intention to surrender them. The letter further identified the passports by providing their bearer numbers. Applicant's October 13, 2005 filing also included a photocopy of a certified mail receipt showing the letter enclosing the passports had been addressed and mailed to the Consular Division. On October 20, 2005, Applicant filed a signed, undated return slip showing receipt of the letter and the expired passports. (Ex. D.)

Applicant married his second wife, a Russian citizen, in 1998. (Ex. 1.) Their civil marriage ceremony was in the U.S., and they traveled to the Russian Federation for their religious marriage ceremony. (Tr. 48.) Applicant and his wife have two small children, both born in the U.S. (Tr. 44-45.) Applicant's wife is a registered alien. (Answer to SOR.) Applicant presented his financial records to show both his economic success as a U.S. citizen and his loyalty to the U.S. (Ex. C.)

Applicant's father, half-brother, half-sister, and mother-in-law are citizens and residents of the Russian Federation. (Tr. 55-58.) Applicant's sister is a U.S. citizen and a resident of the Russian Federation. (Tr. 56-57.) She is married to a citizen of the Russian Federation. (Tr.73.)

Applicant's parents were divorced when he was a small child. (Tr. 55.) His mother, now a U.S. citizen, was employed by the Soviet government as an engineer. (Tr. 77-78.) After the divorce, Applicant's father lost contact with Applicant, his mother, and his sister. The father entered into a relationship which produced two children, who are half-brother and half-sister to Applicant. Applicant has had no contact with his half-siblings. (Tr. 55-56.) Many years later, Applicant sponsored his father for permanent resident status, and his father worked in the U.S. for about three years. (Tr. 55.) The father lost his job in the U.S. and returned to the Russian Federation, where he now lives and works as an engineer. (Tr. 55.)

When Applicant's father was in the U.S., Applicant saw him about once a month. (Tr. 70.) Since his father returned to the Russian Federation, Applicant speaks with him on the telephone about twice a year. (Tr. 69.) Applicant speaks with his sister on the telephone two or three times a year. (Tr. 72.) Applicant's wife speaks with her mother by telephone about once a month. (Tr. 68.) Applicant's wife has two half-brothers who are citizens and residents of the Russian Republic. Applicant and his wife have contact with them five or six times a year. (Tr. 67.) Applicant has no contact with his half-brother and half sister who are citizens and residents of the Russian Federation. (Tr. 56.)

I take administrative notice of political and economic instability in the Russian Federation, conditions which raise security concerns for U.S. citizens visiting or residing there, and, by extension, for those U.S. citizens who have family members residing in the Russian Republic. A U.S. Department of State Public Announcement, dated June 16, 2005, warned U.S. citizens traveling or living in Russia of a heightened potential for terrorist actions, including attacks against civilians such as hostage taking, and bombings (Government Document for Administrative Notice IV at 1). A Consular Information Sheet on the Russian Federation, prepared by the U.S. Department of State and dated June 16, 2005, warns U.S. citizens that travel to the Caucasus region is dangerous and should be avoided. (Government Document for Administrative Notice III at 1.) Tensions exist between the Russian military and the civilian government over resource allocation, restructuring, and reform. Russia's military arsenal remains vulnerable to theft or diversion, providing opportunities for those who would exploit weaknesses and leading to the conclusion that Russia's most immediate security threat is terrorism. ("Global Intelligence Challenges 2005:Meeting Long-Term Challenges with a Long-Term

Strategy," Testimony of the Director of Central Intelligence Before the Senate Select Committee on Intelligence, 16 February 2005, Government Document V for Administrative Notice, at 6; Congressional Research Service Brief for Congress, Russia, updated May 24, 2005, Government Document VI for Administrative Notice, at 11.)

## 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.

## CONCLUSIONS

### **Guideline C - Foreign Preference**

In the SOR, DOHA alleged, and Applicant admitted, with mitigation, that he was issued a passport in June 1998 from the Russian Federation, that he possessed that passport as of December 18, 2003, and that the passport expired in July 2003 (§ 1.a.); that he applied for and was issued a Russian passport in July 1998 even though he became a naturalized U.S. citizen in December 1993 and had a valid U.S. passport issued in June 1994 (§ 1.b.); and that he used his Russian passport instead of his U.S. passport to enter Russia in 1997 and twice in 1998. (§ 1.c.).

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States.

Applicant's admitted conduct raises security concerns under Disqualifying Condition (DC) E2.A3.1.2.1. of Guideline C. After his naturalization as a U.S. citizen and his renunciation of his Russian citizenship, Applicant used his USSR passport and his Russian Federation passport to travel to Russia at least five times.

We turn to an examination of applicable mitigating conditions under Guideline C. An applicant may mitigate Guideline C disqualifying condition E2.A3.1.2.1 if he shows his dual citizenship is based solely on his parents' citizenship or birth in a foreign country (Mitigating Condition (MC) E2.A3.1.3.1.) While Applicant renounced his Russian citizenship upon becoming a U.S. citizen, he actively exercised his dual citizenship status when he used a USSR passport in 1997 and acquired a Russian Federation passport in 1998 to enter the Russian Federation on personal business. Since Applicant actively exercised his dual citizenship, MC E2.A3.1.3.1. is inapplicable.

An applicant can mitigate an indicator of possible foreign preference if it occurred before obtaining United States citizenship (MC E2.A3.1.3.2) or if the activity is sanctioned by the United States. (MC E2.A3.1.3.3.) Neither of these mitigating conditions applies to Applicant's acquisition and use of a Russian Federation passport after obtaining U.S. citizenship.

An applicant may also mitigate an indicator of possible foreign preference by expressing a willingness to renounce dual citizenship. (MC E2.A3.1.3.4.) Applicant expressed a willingness to renounce his dual citizenship and to surrender his expired USSR passport and his expired Russian Federation passport. He did not think his use of his foreign passports

while a U.S. citizen was illegal. After his hearing, he filed documents indicating he had surrendered both expired passports to responsible consular officials of the Russian Federation. Mitigating condition E2.A3.1.3.4. applies to Applicant's case.

Possession and use of a foreign passport may also be a disqualifying condition under ¶ E2.A.3.1.2.2. of Guideline C. In a memorandum, dated August 16, 2000, (Money Memo), Assistant Secretary of Defense Arthur L. Money stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government.

Applicant presented no evidence that he had been granted approval by the U.S. government to possess and use a foreign passport. When the record of this case was still open, he provided evidence that he had relinquished his two expired passports to consular officers of the Russian Federation. Accordingly, SOR allegations 1.a., 1.b., and 1.c. are concluded for the Applicant.

## **Guideline B - Foreign Influence**

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's spouse, a citizen of the Russian Federation, resides with him in the U.S.(¶ 2.a.); that his father, who maintains U.S. alien registration, is a citizen and resident of the Russian Federation (¶2.b.); that his sister is a U.S. citizen residing in the Russian Federation (¶ 2.c.); that his half-brother and half-sisters are citizens and residents of the Russian Federation (¶ 2.d.); and that his mother-in-law is a citizen and resident of the Russian Federation (¶ 2.e.).

A Guideline B security concern exists when an applicant's immediate family, including cohabitants, and other persons to whom he or she might be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. A person who places a high value on family obligations or fidelity to relationships in another country

may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the Russian Federation is politically and economically unstable, conditions that have been exploited by criminal and terrorist groups. Their actions threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of the Russian Federation could be vulnerable to coercion, exploitation, or pressure.

Applicant admits all five allegations under Guideline B and offers mitigating circumstances. His admissions raise security concerns under Disqualifying Conditions (DC) E2.A2.1.2.1 and E2.A2.1.2.2. of the Guideline. Applicant's father, half-brother, half-sister, and mother-in-law are citizens and residents of the Russian Federation. His sister, a U.S. citizen, resides in the Russian Federation. His wife is a citizen of the Russian Federation. The citizenship and residency of these immediate family members raise security concerns under E2.A2.1.2.1. of Guideline B. Applicant's wife, a citizen of the Russian Federation, resides with him in the U.S., and this also raises a concern under DC E2.A2.1.2.2.

An applicant may mitigate foreign influence security concerns by demonstrating that 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 an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's father, half-brother, half-sister, sister, and mother-in-law are agents of a foreign power, his father, mother-in-law, and half-siblings are citizens and residents of the Russian Federation, and his sister, a U.S. citizen, also resides there. The Russian Federation is a nation with an uncertain political and economic future where groups engaged in criminal and terrorist activities are not constrained from acting against U.S. interests. Applicant offered no evidence to rebut the Government's assertion that his wife, a citizen of the Russian Federation, and his several family members residing in the Russian Federation could be exploited by these groups in a way that could force him to choose between loyalty to his family and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's wife lives with him in the U.S. He has telephone contact with his father, a citizen and resident of the Russian Federation, approximately twice a year. He has contact with his sister, a U.S. citizen and resident of the Russian Federation, approximately two or three times a year. While it could be argued his contacts with his father and sister are not frequent, they are nevertheless based on ties of familial affection or obligation and are therefore not casual. Moreover, his wife, a citizen of the Russian Federation, has monthly telephone contact with her mother, who is a citizen and resident of the Russian Federation. Applicant's wife's frequent contact with her mother demonstrates a relationship that is familial instead of casual. Accordingly, mitigating condition E2.A2.1.3.3 does not apply to Applicant's relationships with his wife, father, sister, and mother-in-law.

Applicant has had little or no contact with his half-sister and half-brother, who are citizens and residents of the Russian Federation. These are the children of a relationship his father entered into after Applicant's parents were divorced and



after the father apparently lost contact with Applicant. Because Applicant's contact with his half-siblings can be characterized as casual and infrequent, mitigating condition E2.A2.1.3.3. applies to Applicant's relationship with them.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns alleged in subparagraphs 2.a., 2.b., 2.c., and 2.e. of the SOR and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, those allegations under Guideline B of the SOR are concluded against the Applicant. The allegation in subparagraph 2.d. of the SOR is concluded for Applicant, since he has had little or no contact or correspondence with his half-sister and half-brother who are citizens and residents of the Russian Federation.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: Against Applicant

### **DECISION**

In light of all of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant was divorced from his first wife in 1994. (Ex. 1.)