

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Although Applicant did not identify a Russian woman associate he was sponsoring on a K-1 fiancée visa on his security clearance application (SF-86), he denied falsifying his SF-86 and frequently and voluntarily kept his facility security officer informed of the woman's status in his personal life, thereby rebutting Guideline E security concerns. However, Applicant failed to mitigate security concerns arising from his subsequent marriage relationship with the woman, a U.S. permanent resident and citizen of the Russia Federation, and his relationships with his wife's young son, who resides in his household and is a citizen of the Russia Federation, and with his wife's mother, who is also a resident and citizen of the Russia Federation. Clearance is denied.

CASENO: 04-02479.h1

DATE: 04/20/2006

DATE: April 20, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02479

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq, Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esq.

SYNOPSIS

Although Applicant did not identify a Russian woman associate he was sponsoring on a K-1 fiancée visa on his security clearance application (SF-86), he denied falsifying his SF-86 and frequently and voluntarily kept his facility security officer informed of the woman's status in his personal life, thereby rebutting Guideline E security concerns. However, Applicant failed to mitigate security concerns arising from his subsequent marriage relationship with the woman, a U.S. permanent resident and citizen of the Russia Federation, and his relationships with his wife's young son, who resides in his household and is a citizen of the Russia Federation, and with his wife's mother, who is also a resident and citizen of the Russia Federation. 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 14, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing April 1, 2005, and elected to have a hearing before an administrative judge. On August 15, 2005, the case was assigned to me. The parties agreed to a hearing date of November 21, 2005, and a hearing was convened on that date to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the hearing, the Government called no witnesses and offered six exhibits (Ex. 1 through 6) for admission into evidence and seven official U.S. documents for administrative notice. The Government's exhibits were admitted without objection. The Government's documents for administrative notice were marked I through VII. Applicant objected to the consideration of the Government's documents offered for administrative notice. While Applicant's counsel acknowledged timely receipt of the documents in the pre-hearing discovery process, she objected to the consideration of the documents individually and collectively by the administrative judge because Department Counsel had not informed her prior to the hearing of specific passages within those documents that he intended to call to the judge's attention. Department Counsel asserted the documents were offered in their entirety for administrative notice, and within that scope, he specified particular pages and paragraphs deemed relevant by the Government in the instant case. Applicant offered no alternative page or paragraph citations.

Applicant called one witness in addition to the Applicant and offered one exhibit, which was identified as Ex. A. Applicant's Ex. A was a one-page discovery request, dated October 31, 2005, requesting from the Government a "listing of the specific lines or paragraphs in proposed Government Exhibits I through VII that Department Counsel contends are relevant and/or that Department Counsel intends to bring to the Administrative Judge's attention at the hearing in this matter." The Government offered an additional exhibit, identified as Ex. 7, in rebuttal to Applicant's Ex. A. Ex. A and Ex. 7 were admitted to the record without objection. Pursuant to ¶ E3.1.10 of Enclosure 3 of the Directive, I did not sustain Applicant's objection to my notice of the Government's documents identified as I through VII. On December 2, 2005, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct under Guideline B, Foreign Influence and one allegation of disqualifying conduct under Guideline E, Personal Conduct. Applicant admitted the three Guideline B allegations and denied the Guideline E allegation. His admissions are incorporated as findings of fact.

Applicant is 63 years old and employed as a senior scientist by a defense contractor. He holds a Ph.D. in physics and he is assigned to work on issues related to weapons of mass destruction. (Ex. 1 ; Tr. 35.) He has held a security clearance for approximately 30 years. (Tr. 83.)

Applicant was married for the first time in 1970. He was divorced from his first wife in 1990. He has a 32-year-old son from his first marriage. (Tr. 35-36.)

After his divorce, Applicant had a romantic relationship that lasted a few years. When that ended, he dated casually. One of Applicant's colleagues traveled often to Moscow to work with Russian scientists. He encouraged Applicant to travel to the Russia Federation (Russia) because the country was interesting and because there were, in his opinion, many beautiful women there. He gave Applicant travel information that included opportunities to meet Russian women. (Tr. 37.)

Applicant discussed his plan to travel to Russia with his security officer, who advised him to be careful about crime in Russia. (Tr. 38-39.) Applicant signed up for a travel package that provided social opportunities with Russian women, and he traveled to Russian in 1999 for about 10 days. (Tr. 41; 82.) When he was in the company of his Russian language interpreter, he was introduced to a Russian woman who happened by and who was a friend of the interpreter. (Tr. 39-

40.) Applicant became acquainted with the woman and, when he returned to the U.S., he telephoned her weekly. Since Applicant spoke no Russian and the woman spoke little English, the couple conversed in German. (Tr. 40.) On the basis of this contact, Applicant and the woman decided he would apply for a K-1 or "fiancee" visa for her to join him in the U.S. Applicant filed a K-1 visa request in January 2000. In June 2000 he went to Russia to visit the woman for two weeks. There were some problems and delays in issuing the visa. (Tr. 45-46.) The woman was issued a K-1 visa on October 6, 2000 and came to the U.S., with her eight-year-old son, in November 2000. The couple was married December 26, 2000. (Tr. 92-95.)

Applicant's wife filed a request for permanent resident status in February 2001. She listed her most recent employment in Russia as a bank cashier. Prior to that, she had worked as an assistant manager in a restaurant and as a waitress. She was born in 1966, making her current age approximately 40 years. (Ex. 3; Tr 59.) Her former husband, the father of her son, is an engineer and employed in a defense-related position in Russia. The son spends summer vacations with his father. The boy's paternal grandparents are citizens and residents of Russia and in frail health. (Tr. 98-99.)

In June 2001, Applicant's wife and her son returned to Russia, to visit there for the summer. The wife's re-entry papers were lost or misplaced, and as a result she and her son did not return to the U.S. until May 2002. (Tr. 52-53.)

Applicant and his wife began to experience difficulties in their marriage. Sometime in 2003, Applicant moved to a bedroom in the basement of his home and his wife remained in the master bedroom. The wife had some money she had saved from selling property in Russia. She asked Applicant to help her purchase a condominium, and she suggested they maintain separate households. Applicant had surgery for cancer in June 2004. (Tr. 59.) In December 2004, Applicant and his wife purchased a condominium for her to own and live in. (Tr 55-62.) Applicant and his wife each put \$25,000 down on the purchase of the condominium. The wife has made all subsequent mortgage payments. (Tr. 89.) Applicant's wife is currently living in Applicant's home. (Tr. 69-70.)

Applicant's mother-in-law, a resident and citizen of Russia, came to spend Christmas with her daughter, grandson, and Applicant in 2004. She stayed for six months and returned to Russia in June 2005. Applicant's wife speaks on the telephone with her mother on occasion. (Tr. 65.) Applicant's mother-in-law was employed as an insurance agent in Russia for 30 years. (Tr. 101.) Applicant is very fond of his young step-son, feels invested in his future, and wants to do what is best for him. (Tr. 62; 68.)

In September 2000 Applicant was advised by his employer to file his security clearance application (SF-86) electronically. Applicant followed his employer's instruction but did not transmit his completed form right away. He held on to the form because he was uncertain about how to report his relationship with his associate and her pending request for a K-1 visa. Applicant discussed his dilemma with the colleague who had encouraged him to travel to Russia to meet Russian women. The colleague was not trained in providing advice in answering questions on the SF-86, nor was he authorized to do so. Applicant did not discuss the matter with his security officer. (Tr. 44-49; 103-108) Applicant decided to omit information about the associate on his SF-86 because he was not sure she would be granted the K-1 visa and travel to the U.S. He decided to discuss and clarify the matter in the future during his interview with a security investigator. (Tr. 84.) Applicant denied deliberately falsifying his SF-86 by omitting his associate in his response to Question 9 on the SF-86. (Answer to SOR, at 1-2.)

Applicant transmitted his SF-86 to his employer's security office at the end of September 2000. (Tr. 50.) On October 6, 2000, his associate received her K-1 visa and informed him of this soon thereafter. (Tr. 50.) On approximately October 26 or 27, 2000, Applicant was asked to sign a paper copy of the SF-86 he had submitted at the end of September. He did so, but did not revise his SF-86 to include the information about his associate. (Tr. 75-76.) The associate and her son arrived in the U.S. in November 2000. Applicant informed his security officer that the woman and her son had arrived in the U.S. and were staying in his home. (Tr. 51;81.) Applicant and his wife were married by the time he had his interview with the security investigator. (Tr. 50.)

Government's Ex. 1 is an unsigned SF-86 which shows an electronic filing date of November 1, 2000. The record reflects Applicant informed his security officer of the visit of his mother-in-law in 2005. (Ex. 5.) He also informed his security officer of social contacts he had with Russians who were friends or acquaintances of his wife. (Ex. 4; Ex. 6.)

I take administrative notice of political and economic instability in the Russia 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 Russia Federation. A Consular Information Sheet on the Russia Federation, prepared by the U.S. Department of State and dated June 7, 2005, warned U.S. citizens traveling in the Russia Federation of the dangers of indiscriminate terrorist attacks and cautioned that travel to the Caucasus region is dangerous and should be avoided. (Government Document for Administrative Notice III at 5-6.) 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. ("Current and Projected National Security Threats to the United States," Testimony of the Director, Defense Intelligence Agency, 17 March 2005, Government Document VI for Administrative Notice, at 18-19. Congressional Research Service Brief for Congress, "Russia," updated May 24, 2005, Government Document VII for Administrative Notice, at 11-12.)

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 B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's wife, whom he met during a visit to the Russia Federation, and her son are citizens of Russia (¶ 1.a.); that Applicant's mother-in-law is a citizen and resident of Russia (¶ 1.b.); and that Applicant traveled to Russia in April 1999 and in June 2000. Applicant admitted all Guideline B allegations.

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 Russia 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 Russia Federation could be vulnerable to coercion, exploitation, or pressure.

Applicant's admissions raise two possible Guideline B security concerns. His mother-in-law is a citizen and resident of the Russia Federation. Her citizenship and residency raises security concerns under E2.A2.1.2.1. of Guideline B. Additionally, Applicant's wife and his step-son, with whom he shares his home, are citizens of the Russia Federation, thus raising a security concern under E2.A2.1.2.2. of Guideline B.

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 wife, step-son, and mother-in-law are agents of a foreign power, they are citizens of the Russia Federation. The Russia Federation has 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, step-son, and mother-in-law could be exploited by these groups in a way that could force him to choose between loyalty to his wife and her family members and the security interests of the United States. ISCR Case No. 03-15485, at 4-6 (App. Bd. Jun. 2, 2005)

Foreign connections derived from marriage and not from birth can raise Guideline B security concerns. In reviewing the scope of MC E2.A2.1.3.1, DOHA's Appeal Board has stated that the term "associate(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760, at 4 (App. Bd. Feb. 18, 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 traveled to the Russia Federation twice since 1999 in order to meet and court his wife. While Applicant's current relationship with his wife is strained, it nevertheless reflects a familial relationship that cannot be considered casual. His relationship with his young step-son and with his mother-in-law also are based on bonds of affection and obligation that are familial and not casual. Applicant's contact with his step-son, who resides in his home, is frequent. While his direct contact with his mother-in-law is less frequent than his wife's contact with her, his wife's contact with her mother is neither casual nor infrequent. Accordingly, MC E2.A2.1.3.3 does not apply to Applicant's relationship with his wife, step-son, and mother-in-law. No other Guideline B mitigating conditions are applicable. Accordingly, the Guideline B allegations in the SOR are concluded against the Applicant.

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." Therefore, 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.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answer to Question 9 on his SF-86 by failing to list his associate, who later became his wife, even as he was actively working to sponsor her entry into the United States (§ 2.a). Applicant denied knowingly falsifying his answer. He said he did not list his associate because, at the time he completed and filed his SF-86, it was not clear she would be granted a K-1 visa and their relationship would continue. He promptly advised his security officer when the associate received the visa and came, with her young son, to live in his household in November 2000. Additionally, Applicant presented a history of keeping his security officer informed of his contacts with foreign citizens, including his wife, her son, and his mother-in-law.

Applicant's alleged conduct falls under disqualifying condition E2.A5.1.2.2. of Guideline E. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in the SOR, the Government failed to establish its case. The record evidence failed to show when Applicant actually signed and dated the SF-86 he filed electronically sometime between September and November 2000. Applicant's testimony regarding his knowledge of his associate's status in September 2000, along with evidence showing he was forthcoming in keeping his security officer informed of his relationship with the Russian woman, was sufficient to rebut the Government's allegation. Accordingly, the allegation in ¶ 2.a. of the SOR is concluded for the Applicant.

In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive. I conclude that while Applicant has rebutted the security concerns raised by the Guideline E allegation in the SOR, he has not done so regarding the Guideline B allegations in the SOR, and thus he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

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

Paragraph 1.: Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2.: Guideline E: FOR APPLICANT

Subparagraph 2.a.: For 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.