

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant mitigated security concerns over foreign influence concerns over her brothers, in-laws, and friends who are citizens of and reside in Russia. Applicant has limited contact with them. Her son is a Russian citizen but is a permanent resident of the U.S. Applicant assures that she would contact appropriate U.S. officials if any pressure were attempted is credible given her long history at work since 1997 and her strong ties to the U.S. She has similarly mitigated foreign preference concerns as she renounced her Russian citizenship in October 2005 and returned her foreign passport to the consulate. Clearance is granted.

CASENO: 04-03760.h1

DATE: 03/03/2006

DATE: March 3, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03860

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence concerns over her brothers, in-laws, and friends who are citizens of and reside Russia. Applicant has limited contact with them. Her son is a Russian citizen but is a permanent resident of the U.S. Applicant assures that she would contact appropriate U.S. officials if any pressure were attempted is credible given her long history at work since 1997 and her strong ties to the U.S. She has similarly mitigated foreign preference concerns as she renounced her Russian citizenship in October 2005 and returned her foreign passport to the consulate. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) [\(1\)](#) to the Applicant on April 15, 2005. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant her access to classified information. The SOR alleges specific concerns in paragraph 1 over foreign influence (Guideline B) and in paragraph 2 over foreign preference (Guideline C). Applicant replied to the SOR allegations in an Answer notarized on May 10, 2005, and requested a hearing.

After Department Counsel stated the case was ready to proceed on July 13, 2005, the case was assigned to me on July 19, 2005. On August 11, 2005, DOHA issued a Notice of Hearing and set this case to be heard on September 6, 2005, in a city near where Applicant lives and works. At the hearing Department Counsel presented two exhibits (Exhibits 1-2) which were admitted into evidence without objection. I also granted Department Counsel's request that administrative notice (AN) be taken of the information contained in Exhibits I - VI as Applicant did not object. (AN I-VI)

Similarly, Applicant testified and asked that administrative notice be taken of one document, Exhibit VII. Despite Department Counsel's objection, I accepted AN VII for administrative notice. (TR 24-26) Applicant requested that she be allowed thirty days to submit additional evidence. Although Department Counsel objected, I allowed her until October 5, 2005, to submit additional evidence as she was *pro se* and had not fully understood the DoD policy clarification of Guideline C August 2000 "Money memorandum" ⁽²⁾ requirements. (TR 40-42) On September 23, 2005, Applicant submitted a letter with an attachment and also asked that she be allowed additional time as the consulate was affected by the hurricane and evacuation. (Exhibit A) Additional time was granted. On October 4, 2006, Applicant submitted additional documents. (Exhibit B) Department Counsel had no objection to the Applicant's documents being admitted into evidence. Consequently, I admitted Exhibits A & B, and the record closed. The transcript (TR) was received on September 16, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 42 years old, has worked for a defense contractor (Employer #1) in State #1 since January 2002. From 1997 to 2002 she worked for Employer #1 in State #2. In May 2003 she completed a Security Clearance Application (Standard Form 86). Previously, Applicant worked for another corporation in State #2 from 1993 to 1997. Applicant received a master's degree from a university in State #2 in May 1997. She has worked as an engineer since 1997. (Answer; Exhibits 1, 2) A security clearance is not required for her current job. (TR 30-31, 34-35)

Applicant came to the U.S. in 1991 to marry ⁽³⁾ a U.S. citizen in September 1991; she then returned to Russia to await immigration paperwork for her and her child. It was approved in 1992. Applicant became a U.S. citizen in December 1996. She and her U.S. husband were divorced in December 2002. Previously, she had been married in Russia in 1983 and divorced in 1988; they had one child born in 1984. (Answer; Exhibits 1, 2; TR 21-22, 37)

Foreign Influence

Applicant's son lives in State #2 as a permanent resident, but is not yet a U.S. citizen even though he was eligible to

become a U.S. citizen in 1996. He plans to apply for U.S. citizenship in the future. Applicant last traveled to Russia to see her mother in 1999 because she was ill. Applicant's parents are deceased. Her father who was a citizen of Russia died in 1983. Her mother, also a citizen of Russia, died in December 2000. She has two brothers who are citizens of Russia and reside in Russia, but she is not close to them and has infrequent contact with them. She has not had contact with one brother since 1984. While she normally would speak to her other brother once a year, she has not spoken to him since 2000. Neither brother works for the Russian government: one is a bus driver, and the other is a handyman for a private company. She has two close friends in Russia who still live there: one is her former sister-in-law and works in the private sector with a small shop, and the other is a tennis instructor. She contacts her former husband's parents who are retired once a year. Applicant has no financial interests of any kind in Russia. While she has lived in the U.S., she has not been contacted by a representative of a foreign organization or government. (Exhibit A Exhibits 1, 2; TR 20-21, 30-34, 37-39)

Russia is an active collector of economic espionage. (AN I-VI) With Applicant's extensive ties to the U.S., she credibly established she would not surrender to any pressures from the government of Russia. Applicant demonstrated she would choose her loyalty to the United States over loyalty to her distant relatives and friends in Russia or her son in the U.S. (TR 28-29)

Foreign Preference

Applicant last traveled to Russia in 1999 on a Russian passport to visit her mother, other relatives and friends. Even though her Russian passport had expired in 1997, she could not get a visa on her U.S. passport as the Russian Consulate still considered her a Russian citizen. They issued her a new passport to travel to Russia. She used her U.S. passport to re-enter the U.S. In January 2004 she stated that she was willing to relinquish her Russian passport which expired in ay 2004 if asked to do so and denied her intent to exercise dual citizenship with Russia and the U.S. (Answer; Exhibits 1, 2; TR 23-24, 37-38) Initially, Applicant did not understand what steps she needed to take to renounce her Russian citizenship and passport, but expressed a willingness to do so to obtain a clearance to continue her job. (TR 24-28, 33-34) At the hearing Applicant stated her clear intent to renounce her Russian citizenship. (TR 39-40)

Action to Relinquish Russian Passport and Citizenship

After the hearing Applicant contacted the Russian Consulate in Washington, D.C., and requested the forms to renounce her Russian citizenship. She was advised to contact a regional office. Because her file was originally in State #2, she had to have it transferred to State #3. However, because of extreme weather conditions, the paperwork was delayed. In October 2005 Applicant stated that in order to apply to terminate her Russian citizenship she had to submit a valid Russian passport and a copy of her U.S. passport. Since her Russian passport had expired, she had to apply for a new passport in September 2005. She traveled to State #3 to the Russian Consulate to then surrender this new Russian passport in order to petition the Consulate General of the Russian Federation to terminate her citizenship. She irrevocably surrendered her Russian passport to the governmental authority in October 2005. (Exhibits A, B)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline B - Foreign Influence

E2.A2.1.1. The concern: 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: (1) not citizens of the United States or (2) 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.

Guideline C - Foreign Preference

E2.A3.1.1. The concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The responsibility for producing evidence initially falls on the government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

Because of Applicant's family ties in Russia, the government raised foreign influence concerns under disqualifying conditions (DC) 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; and DC E2.A2.1.2.6.: Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. Applicant's brothers, former in-laws, and friends are citizens of Russia and reside there; she also has a son who is a citizen of Russia but lives in the U.S. as a permanent resident.

While I have seriously considered these security concerns and the document submitted for administrative notice which raises security concerns over Russia's extensive industrial espionage, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigated⁽⁴⁾ the government's security concerns. There is no evidence that any of her relatives or friends are agents of a foreign power. Applicant's contact and correspondence with her brothers is almost non-existent. Her contact with her former husband's parents and her friends is casual and infrequent. Her immediate family, her son, is in the U.S.; he is a permanent resident who will seek U.S. citizenship.

Also, I have evaluated the relevance of her conduct and considered the following whole person factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these factors, I conclude Applicant has overcome foreign influence security concerns. Given her testimony of her strong ties to the U.S. since becoming a naturalized citizen in 1996 and her long record since 1997 as an defense contractor employee, I conclude there is limited potential for coercion, exploitation or duress. (E.2.2.1.8.) While she returned to Russia in 1999, her motivation was simply to visit her ill mother, she has not returned since her mother's death. (E.2.2.1.7.) She provides no financial support to any of these relatives or friends. All of her assets are in the U.S. (E.2.2.1.9.) It is unlikely that she could be exploited by coercive or non-coercive means by the government in Russia in a way that could force Applicant to choose between loyalty to her distant relatives and friends and her loyalty

to the United States.

Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these limited family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.e. in Applicant's favor.

Foreign Preference

Also, Applicant mitigated the government's security concern over her past acts which indicated a preference for a foreign country over the United States. Applicant exercised her Russian citizenship by continuing to possess her foreign passport after she became a naturalized U.S. citizen and re-applied for and used her foreign passport exclusively for travel to Russia once in 1999. Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.1.: The exercise of dual citizenship and E2.A3.1.2.2.: Possession and/or use of a foreign passport. This disqualifying conduct raised a security concern over her possible preference for her status as a Russian citizen over her status as an U.S. citizen. The possession of a foreign passport could allow Applicant to travel without accountability and outside the ambit of U.S. immigration controls which raises concerns. Further, even governments that are allies of the U.S. will not have identical interests over vital matters.

Applicant has taken material steps to mitigate⁽⁵⁾ these security concerns. Initially, Applicant was slow to act as she did not understand and was unsure how to proceed to comply with the security requirements of the OASDC3I memorandum of August 16, 2000. Once Applicant understood the U.S. security concerns over her retaining her foreign citizenship, she expressed her willingness to surrender her passport and renounce her citizenship. After the hearing she took the required formal steps to renounce her Russian citizenship and returned her Russian passport in October 2005. Strangely, they required her to apply for and receive a new passport in order to take these steps, but she did so only to effectuate her renunciation. Applicant went to the Russian Consulate in person in another state in order to complete these steps as confirmed by the Russian Vice-Consul. Thus, MC 4 applies because she renounced her foreign citizenship. As required by the OASDC3I memorandum of August 16, 2000, her passport has been returned to the Russian government.

As the Appeal Board established in ISCR Case No. 03-04300, her slowness to act is not a bar as "There are no stated requirements in Guideline C Mitigating Condition 4 concerning *when* an applicant is required to comply with its provisions." (emphasis added) Further, she irrevocably surrendered her Russian passport to the governmental authority. (February 16, 2006, at 5) Also, as clarified in ISCR Case No. 03-11765 (April 11, 2005) at 14, "Given the wording of Foreign Preference Mitigating Condition 4, the absence of evidence that Applicant's application for renunciation of . . . citizenship has been approved did not preclude the Administrative Judge from applying that mitigating condition." Thus, her actions in traveling to the Russian Consulate to file the appropriate paperwork to renounce her Russian citizenship establish she does not prefer the interests of another country over those of the U.S.

Having weighed the record evidence as a whole under the other factors outlined in Directive, I conclude Applicant's disqualifying conduct was not undertaken in such a way as to establish her preference for a foreign country over the U.S. Applicant has lived in the U.S. since 1992, became a naturalized U.S. citizen in 1996, and worked in this country continuously for a defense contractor since 1997. Her son is in the U.S. She has demonstrated a strong preference for the U.S. over any other foreign nation by giving up her Russian passport and citizenship. Therefore, I conclude Guideline C for Applicant. Thus, favorable findings are warranted with respect to subparagraphs 2.a. through 2.c. of the SOR.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline C FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).
2. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport . . ." The DoD August 16, 2000, Policy Clarification Memorandum stated, in 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 mitigation factor addresses the official approval of the United States Government for the possession or use. **** 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."
3. I gave no weight to Applicant's internet report that "Russians who marry foreigners could be exiled and stripped of their citizenship" under a bill being drafted by a group of members of the Russian parliament. Although she had married an American, Applicant has subsequently divorced him and any impact of this potential Russian legislation is speculative. She incorrectly concluded that this report might create uncertainty about the status of her Russian citizenship. (AN VII)
4. E2.A2.1.3 Conditions that could mitigate security concerns include: 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; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.
5. **E2.A3.1.3. Conditions that could mitigate security concerns include:** E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country; E2.A3.1.3.2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship; E2.A3.1.3.3. Activity is sanctioned by the United States; E2.A3.1.4.4. Individual has expressed a willingness to renounce dual citizenship.