

KEYWORD: Foreign Influence

DIGEST: Applicant is a naturalized United States citizen who was born in Ukraine. Concerns were raised because her husband and paternal grandparents are citizens of Russia residing in the United States. In addition, concerns were raised due to the status of her maternal grandmother, brother-in-law, sister-in-law, and step-daughter as citizens of and residing in Russia. Her maternal grandmother has passed away. She has little to no contact with her husband's relatives. All of her immediate relatives reside in the United States. Foreign preference concerns have been mitigated. Clearance is granted.

CASENO: 04-06569.h1

DATE: 03/30/2006

DATE: March 30,2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No.04-06569

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized United States citizen who was born in Ukraine. Concerns were raised because her husband and paternal grandparents are citizens of Russia residing in the United States. In addition, concerns were raised due to the status of her maternal grandmother, brother-in-law, sister-in-law, and step-daughter as citizens of and residing in Russia. Her maternal grandmother has passed away. She has little to no contact with her husband's relatives. All of her immediate relatives reside in the United States. Foreign preference concerns have been mitigated. Clearance is granted.

STATEMENT OF CASE

On April 15, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, Foreign Influence.

In a sworn statement dated April 22, 2005, Applicant responded to the SOR allegations. She initially requested a hearing and the case was assigned to another administrative judge on July 19, 2005. On July 25, 2005, Applicant submitted a request to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on August 19, 2005. The FORM was mailed to Applicant on August 23, 2005, and received on September 8, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond. The case was assigned to me on December 30, 2005.

FINDINGS OF FACT

Applicant admits to all of the SOR allegations. She is 31-years-old and is a senior analyst for a defense contractor. She submitted a security clearance application on May 7, 2003. [\(2\)](#)

Applicant was born in Ukraine. [\(3\)](#) Her mother was born in Russia. Her father was born in Ukraine. [\(4\)](#) In 1989, she and her family left Ukraine and eventually moved to the United States in 1990. They became United States citizens in 1996. [\(5\)](#)

Applicant's maternal grandmother lived in Russia. She passed away in April 2004. [\(6\)](#) Her paternal grandparents immigrated from Russia. They became United States citizens. Her paternal grandfather lives in the United States. Her paternal grandmother passed away in 2004. [\(7\)](#)

Applicant met her husband in 1999. He is a Russian citizen who is a permanent resident of the United States. He is applying for United States citizenship. [\(8\)](#) He is an artist and set designer. [\(9\)](#) They married in March 2000. Their son was born in February 2002. [\(10\)](#)

Applicant's husband has several relatives who are citizens of and reside in Russia. His brother and sister are citizens of and reside in Russia. He contacts them about once a year. Applicant has never met and has no contact with her brother-in-law and sister-in-law. Her husband has a daughter from a prior marriage who is a citizen of and resides in Russia. She is approximately 28 years old. Her husband talks to his daughter on the phone about once a month. Applicant has spoken to her step-daughter on the phone once and has never met her. [\(11\)](#)

When her grandmother was alive, Applicant visited her in Russia in 1998 and in early 2000. [\(12\)](#) The 1998 trip was a personal visit. The 2000 visit occurred in conjunction with a business trip. In 2000, she traveled to Russia five times. Each trip was business-related. [\(13\)](#)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with the respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽¹⁴⁾ The government has the burden of proving controverted facts. ⁽¹⁵⁾ The burden of proof is something less than a preponderance of evidence. ⁽¹⁶⁾ 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. ⁽¹⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹⁸⁾

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽¹⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. ⁽²⁰⁾ 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B - 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: (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. Contact 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Under the foreign influence concern, a potentially disqualifying condition is raised with respect to Applicant's husband and her paternal grandparents since they are citizens of Russia residing in the United States. As such, Foreign Influence Disqualifying Condition (FI 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) applies.

I conclude the Government has not established a prima facie case under foreign influence with respect to Applicant's maternal grandmother, step-daughter, brother-in-law and sister-in-law. Based on the record evidence, it is clear that Applicant had close ties of affection with her maternal grandmother. She visited her on two occasions in Russia. However, her grandmother has passed away which makes the foreign influence concern with respect to her grandmother a moot point.

Applicant does not have close ties of affection or a sense of obligation to her step-daughter, brother-in-law, or sister-in-law. They are citizens of and reside in Russia but they are not considered immediate relatives within the definition of FI DC 1. Although the DOHA Appeal Board has stated that there is a rebuttable presumption that a person has ties of affection for, or obligation to the immediate family members of the person's spouse, ⁽²¹⁾ Applicant has never met her brother-in-law or sister-in-law. She has never talked to them on the telephone. Her husband has limited contact with his siblings. He calls them once a year. She has never met her step-daughter. She has spoken with her on the phone only once. Considering her limited contact with her husband's relatives, I conclude Applicant has rebutted the presumption that she has ties of affection or a sense of obligation to her husband's relatives who are citizens of and reside in Russia. I find for the Applicant with respect to ¶¶ 1.b of the SOR.

A foreign influence security concern remains with respect to SOR ¶¶s 1.a, 1.c, and 1.d. The foreign influence concern can be mitigated. Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1: (A determination that immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates) 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 the loyalty to the person(s) involved and the United States) is applicable to this case.

Based on the record evidence before me, I conclude Applicant's husband and paternal grandparents are not agents of a foreign power. Her husband is a self-employed artist and set designer. Her paternal grandparents reside in the United States and became United States citizens. Her paternal grandmother passed away in 2004. Her husband is a permanent resident of the United States who has applied for United States citizenship. Because her husband and grandfather reside in the United States, it is unlikely they are in a position to be exploited by a foreign power in a way which could force Applicant to choose between the loyalty to the person(s) involved and the United States.

Given her limited contact with her husband's foreign relations, FI MC E2.A2.1.3.3: (Contact and correspondence with foreign citizens are casual and infrequent) applies with respect to her in-laws and step-daughter. A concern was alleged pertaining to trips Applicant made to Russia; once in 1998 and five times in 2000. The 1998 trip was a personal visit to see her maternal grandmother. The five trips in 2000 were business-related. She did take the opportunity to visit her maternal grandmother during one of these business trips. She has not traveled to Russia since 2000. Applicant's foreign travel does not raise a security concern.

Applicant has resided in the United States since 1990. She became a United States citizen in 1996. Her parents and paternal grandparents immigrated to the United States and became United States citizens. Her son was born in the United States. Her family's financial interests are in the United States. Her substantial ties to and preference for the United States lead me to conclude she can be trusted to place her obligation to the United States government ahead of any sense of obligation to her husband's relatives residing in Russia due to her minimal contact with them. She no longer has immediate relatives residing in Russia.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has mitigated the foreign influence security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided for 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: FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Subparagraph 1.d. 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 Applicant. Clearance is granted.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. *Item 4.*
3. *Item 1, question 1.*
4. *Id. at question 9.*
5. *Item 5, p.3; Item 4, question 10.*
6. *Item 3.*
7. *Id.*
8. *Item 5, p.3.*
9. *Id.; Item 3, p.2.*
10. *Item 5, p.2.*
11. *Item 5, p.4.*
12. *Item 4, p.3.*
13. *Item 3, p.2.*
14. *ISCR Case No. 96-0277 (July 11, 1997) at p. 2.*
15. *ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.*
16. *Department of the Navy v. Egan, 484 U.S. 518, 531 (1988).*
17. *ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.*
18. *ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15*
19. *Id.; Directive, Enclosure 2, ¶ E2.2.2.*
20. *Executive Order 10865 § 7.*
21. *ISCR Case No. 01-03120 (February 20, 2002) at p. 4.*