

DATE: November 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06877

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a natural born United States citizen, married a Russian citizen in September 1999, whom he met while she was attending college in the U.S. on a student visa. He and his wife are now separated, have filed for divorce, have no intention of reconciling, and anticipate the divorce being final by the end of 2005. Applicant has mitigated the foreign influence security concern that existed in this case. Clearance is granted.

STATEMENT OF THE CASE

On November 5, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on December 13, 2004, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on August 1, 2005. A notice of hearing was issued on September 9, 2005, scheduling the hearing for September 28, 2005. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4. GE 1 and 2 were admitted into the record, and administrative notice was taken of the information contained in GE 3 and 4 without objection. Applicant testified and submitted one documentary exhibit that was marked as Applicant's Exhibit (AE) 1, and admitted into the record without objection. The transcript was received on October 17, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 31-year-old man who has been employed by a defense contractor as a software engineer since July 1996. He graduated from college with a bachelor of science degree in computer science in 1996, having also worked at the college as computer assistant from August 1992 to July 1996. He possessed a top secret clearance from 1996 to 2001 that was downgraded to secret after he married a foreign national. No allegations have ever been made that he mishandled classified information.

Applicant met his wife, a Russian citizen attending school in the U.S. on a student visa, in October 1994, while they were both students at the same college. They became casual friends, and remained friends after she returned to Russia in July 1995. Following his wife's return to Russia they conversed occasionally by telephone, and he visited her in Russia in June 1996. During his visit to Russia he stayed with her and her mother.

Applicant describes their continuing relationship as nothing more than friendship. However, they vacationed together in Italy for a week in November 1997, and, in September 1998, while Applicant was in Europe on business, he traveled to Germany where she was working to visit with her for three or four days. They again vacationed together in Mexico for ten days in January 1999, during which he asked her to marry him. She returned to Germany without having accepted his proposal, but did so about a week later. She immigrated to the U.S. in July 1999, and they were married in September 1999. They have no children.

Applicant's wife is an only child. Her parents are citizens and residents of Russia and have been divorced since she was about three years old. She had little contact with her father, a former KGB employee, while growing up, and Applicant believes she has not spoken to him in the last three years. She is, however, close with her mother, and Applicant has estimated they speak by telephone between every other day and once a week. Applicant's wife and mother-in-law are co-owners of an apartment in Russia that he values at between four and five thousand dollars. Applicant's mother-in-law is a teacher, and has taught in the People's Republic of China through a program sponsored by a Russian university.

Applicant's mother-in-law visited with them in the U.S. for about two weeks at the time of their wedding in September 1999. She again visited with them in the U.S. for about a month in January 2002. Applicant and his wife visited with his mother-in-law in Russia for one week in March 2001. Applicant has neither seen nor spoken with his mother-in-law since 2002. Applicant's wife maintains a relatively close friendship with about five persons in Russia, and visits by herself with her mother and those friends in Russia about every eight months.

Applicant's wife became a naturalized U.S. citizen in June 2003. To Applicant's surprise, his wife left him four months later. They have had minimal contact since she left, have agreeably divided what possessions they own, and have maintained separate finances since the separation. Applicant had only seen his wife about three times in the six months preceding the hearing, and then only to discuss their forthcoming divorce. Applicant filed for divorce on September 19, 2005, had an initial divorce conference scheduled for November 16, 2005, and anticipated the divorce would be finalized sometime around the end of 2005. Applicant and his wife are each dating other persons and he does not foresee any possibility of a reconciliation.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. (2) The government has the burden of proving controverted facts. (3) (4)

The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

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 not citizens of the United States or 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.

Applicant has successfully mitigated the security concern that existed from his marriage to a Russian citizen whose parents are citizens and residents of Russia. That marriage and those relationships created a concern under Disqualifying Conditions (DC) 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 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists.*

However, Applicant and his wife, who is now a U.S. citizen, have lived separate and apart since October 2003. They have divided their assets, maintained separate finances, had minimal contact with each other, and have undertaken new relationships since the separation. Applicant filed for a divorce in September 2005, sees no possibility of a reconciliation, and anticipates finalization of the divorce within a few months. Further, he has had no contact with his wife's parents for several years, and has no reason to feel any sense of responsibility or obligation to them.

Applicant's estrangement from his wife, the soon to be dissolution of their marriage, and his almost non-existent contact with her and her parents warrant application of Mitigating Conditions (MC) 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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;* and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I conclude that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.