

KEYWORD: Foreign Influence

DIGEST: Applicant's familial ties to citizens and residents of the Russia Federation raise serious security concerns because they could result in the compromise of classified information. Clearance is denied.

CASENO: 04-06934.h1

DATE: 01/26/2006

DATE: January 26, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06934

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie Hess, Esq., Department Counsel

## **FOR APPLICANT**

Elizabeth L. Newman, Esq.

### **SYNOPSIS**

Applicant's familial ties to citizens and residents of the Russia 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 April 11, 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) of the Directive. Applicant answered the SOR in writing April 27, 2005, and elected to have a hearing before an administrative judge. On July 7, 2005, the case was assigned to me. The parties agreed to a hearing date of October 19, 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, submitted two exhibits for identification and admission into evidence, and submitted six official U.S. documents for administrative notice. Applicant did not object to the admission of the Government's two exhibits, which were identified as Ex. 1 and Ex. 2, and they were admitted into evidence. However, Applicant objected to the documents offered by the Government for administrative notice as irrelevant and immaterial. Applicant's objection was overruled, and the Government's documents were numbered I through VI, and admitted to the record for the purpose of administrative notice. Applicant submitted no exhibits and called one witness. On November 1, 2005, DOHA received the transcript (Tr.) of the proceeding.

## FINDINGS OF FACT

The SOR contains six allegations of disqualifying conduct charged under Guideline B, Foreign Influence. In her answer to the SOR, Applicant admitted three allegations, and offered facts in mitigation. She admitted in part one allegation, and offered mitigating circumstances. She also admitted in part and denied in part two allegations. Her admissions are incorporated as findings of fact.

Applicant is 36 years old and employed as a consultant by a defense contractor. She holds undergraduate and graduate degrees in electrical engineering. She designs satellite communications systems for use in war zones. (Ex. 1; Tr. 30; 46; 51.) Her annual salary is \$96,000.

Applicant was born in the former Union of Soviet Socialist Republics (USSR). As a young child, she demonstrated prodigious ability in a competitive sport. Throughout her high school and college years, she was subsidized by the government so she could develop her athletic skills for the benefit of the USSR. She completed in national and international competitions, and her financial support came from a USSR military sport club. In 1988 she enlisted voluntarily in the USSR military, where she served for approximately three years. While she was technically assigned to a professional position in the military, she was never required to wear a uniform, and her actual duties were to train and represent the military club in sport competitions. Her Russian coaches at this time were military personnel, and she was training to represent the USSR in the 1992 Olympics. (Ex. 2, Tr. 34-36)

Applicant became renowned in her sport and established world records. (Tr. 11; 34-39; 48.)

During this time, Applicant met some American athletes at international competitions. They encouraged her to come to the U.S., where she could acquire an athletic scholarship and pursue her education in the U.S. ( Tr. 36-37.) Applicant planned to come to the U.S., arrange for a scholarship in her sport at a U.S. university, and return to the USSR to train for the 1992 Olympics. (Tr. 39.)

She left the USSR for the U.S. in August 1991, soon after the Gorbachev government was overthrown. (Tr. 39.). Her contact in the U.S. was a young man, also an athlete in her sport, whom she had met through her Russian teammates. She became romantically involved with the young man, who was a U.S. citizen. (Tr. 41-42.)

Applicant did not return to the USSR as she had originally planned. She learned her coach in the USSR had left for a job in another country. Since she was no longer in the military of the USSR, she had no salary to support training for the Olympics. (Tr. 43.)

Applicant and the American athlete were married at the end of 1991. Applicant received an athletic scholarship, remained in the U.S., and acquired a bachelor's degree and a master's degree in electrical engineering.

Applicant became a naturalized U.S. citizen in 1995. (Ex. 1.) She was divorced from her first husband in 1997. In 1997, she married a Russian citizen she had known before emigrating to the U.S. Applicant's second husband was the son of her coach in the military sports club. (Ex. 1; Tr. 54.)

Applicant obtained a job with a government contractor, but her husband had trouble finding work. (Tr. 55.) Applicant and her second husband were divorced in 2002. (Ex. 2.)

When Applicant completed her security clearance application (SF-86) in January 2003, she listed a man who was a citizen of a Central Asian country as her associate. (Ex. 1.) This person became Applicant's boyfriend after she was divorced from her second husband. (Tr. 57-58.) The boyfriend was involved in the same sport as Applicant. Applicant signed affidavits in support of the man's parents' and brother's green card applications. Her sponsorship obligations for these individuals expired as of July 2005. Applicant's relationship with the man ended in early 2004. She has had no further contact with him. (Answer to SOR at 3; Tr. 57-58.) .

Applicant's mother and father, who are divorced from one another, are citizens and residents of the Russia Federation. Applicant's mother was an engineer who designed ships for the USSR. She is now retired and receives a pension from the government of the Russia Federation. (Tr. 71-72.) Applicant has a bank account which her mother has access to. Applicant transfers \$100 to the account every month, and her mother can, at her discretion, draw money from the account. (Tr.32-33; 62.)

Applicant is not close to her father. She does not know his address or specifically what he does for a living. (Tr. 32-33; 72-73.) She sees her father every two years, when she visits her mother and sister. (Tr. 33.)

Applicant has a twin sister who is a citizen and resident of the Russia Federation. The sister does not work outside the home. Her husband, also a citizen and resident of the Russia Federation, is a manager with a company that installs electronic wiring and computer networks. (Tr. 73)

Applicant is in telephone contact with her mother and sister approximately five to seven times per year. She spends about three weeks with her sister and mother every two years. Her most recent visit with her sister occurred in April

2005. (Answer to SOR at 2.) When Applicant visited Russia in 2003, she gave her sister a one-time birthday gift of \$2,000 so she could obtain braces for her teeth. (Tr. 61.) On her previous biennial visits, Applicant has given her sister money and gifts totaling less than \$1,000. (Answer to SOR at 3.) Approximately every two years, when she visits her family, Applicant also visits with former teammates and coaches in her sport. (Tr. 84-85.)

Applicant traveled to the Russia Federation to visit family and childhood friends in May 1996, May 1997, October 1999, September 2001, May 2003, and April 2005.

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 U.S. Department of State Public Announcement, dated March 30, 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 Russia 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 I for Administrative Notice, at 6; Congressional Research Service Brief for Congress, Russia, updated May 5, 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 B - Foreign Influence**

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother and father are citizens and residents of Russia (¶ 1.a.); that Applicant provides \$100 to \$200 monthly to her mother (¶ 1.b.); that Applicant's twin sister is a citizen and resident of Russia (¶ 1.c.); that Applicant provides her sister with financial support of about \$2,000 every two years (¶ 1.d.); that Applicant traveled to Russia in at least May 1996, May 1997, October 1999, September 2001, and May 2003 (¶ 1.e.); and that Applicant had an association with a citizen of a Central Asian country who resides in the U.S. and that she signed an affidavit of support for his parents' and his brother's green card applications (¶ 1.f.).

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

Applicant's admissions raise two possible Guideline B security concerns. Applicant's mother, father, and sister are citizens and residents of the Russia Federation. The citizenship and residency of these immediate family members raise security concerns under E2.A2.1.2.1. of Guideline B. Applicant provided affidavits in support of green card applications for her former boyfriend's parents and brother, thus taking on responsibilities that could make her vulnerable to coercion, exploitation, or pressure by a foreign government and raising security concerns under DC E2.A2.1.2.6. Applicant's relationship with the associate ended in early 2004 and she has had no further contact with him since then. Her sponsorship responsibilities to his family members ended in July 2005. Accordingly, I find DC E2.A2.1.2.6. does not apply.

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 mother, father, and sister are agents of a foreign power, they are citizens and residents 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 her parents and sister could be exploited by these groups in a way that could force her to choose between loyalty to her 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 she shows her contacts and correspondence with foreign citizens are casual and infrequent. MC E2.A2.1.3.3. Applicant visits her family members in the Russia Federation every two years. Her last visit occurred in April 2005. She has telephone contact with her mother and sister approximately five or six times per year. While it could be argued Applicant's contacts with her father are not frequent, they are nevertheless based on ties of familial affection or obligation and are therefore not casual. Applicant is attentive and generous to her mother and twin sister. She provides them with gifts of goods and money, demonstrating a relationship that is familial instead of casual. Accordingly, mitigating condition E2.A2.1.3.3 does not apply to Applicant's relationships with her father, mother, and sister.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested she was not a loyal American citizen and a credit to her adopted country. However, she was unable to put forward evidence that mitigated the security concerns alleged in subparagraphs 1.a., 1.b., 1.c., and 1.e. of the SOR and demonstrate that she 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. Applicant successfully rebutted the allegation in subparagraph 1.d. of the SOR by showing she gave her sister a one-time gift of \$2,000 so she could obtain braces for her teeth, and she gives her sister gifts of less than \$1,000 when she visits her every two years. These facts and

circumstances suggest gifts and not consistent financial support as alleged in subparagraph 1.d. Accordingly, allegation 1.d. of the SOR is concluded for the Applicant. Subparagraph 1.f. of the SOR is also concluded for the Applicant, since she no longer has a relationship with the individual identified in the allegation and no longer has responsibilities as a green card sponsor to his parents and brother.

### **FORMAL FINDINGS**

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

Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: 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.