

KEYWORD: Foreign Influence

DIGEST: The Applicant is a native born American, who has worked in the defense industry since 1971. In 2001, he married a Russian national. She has applied for U.S. citizenship. The Applicant's 12 year old Russian step-daughter resides with the Applicant and his wife in the U.S. The Applicant's 78 year old Russian mother-in-law resides in Russia. She lives in an apartment owned by the Applicant's spouse, which is worth about \$13,000. His net worth in the U.S. is \$240,000~\$270,000. The Applicant knows the reporting procedures if he is ever approached by someone inquiring about his job. The Applicant is not subject to coercion vis-a-vis his wife's Russian relatives. Mitigation is shown. Clearance is granted.

CASENO: 04-08878.h1

DATE: 01/20/2006

DATE: January 20, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-08878

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

## **FOR GOVERNMENT**

Candace L. Le'i, Esquire, Department Counsel

## **FOR APPLICANT**

B. Daniel Lynch, Esquire, Applicant's Counsel

## **SYNOPSIS**

The Applicant is a native born American, who has worked in the defense industry since 1971. In 2001, he married a Russian national. She has applied for U.S. citizenship. The Applicant's 12 year old Russian step-daughter resides with the Applicant and his wife in the U.S. The Applicant's 78 year old Russian mother-in-law resides in Russia. She lives in an apartment owned by the Applicant's spouse, which is worth about \$13,000. His net worth in the U.S. is \$240,000~\$270,000. The Applicant knows the reporting procedures if he is ever approached by someone inquiring about his job. The Applicant is not subject to coercion vis-a-vis his Russian wife's relatives. Mitigation is shown. Clearance is granted.

## **STATEMENT OF THE CASE**

On May 31, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on July 21, 2005.

The case was received by the undersigned on September 29, 2005. A notice of hearing was issued on October 13, 2005, and the case was heard on November 21, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence, and called five witness to testify on his behalf. The transcript (TR) was received on December 12, 2005. The issue raised here is whether the Applicant's perceived

Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis for all of the allegations.]

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 57 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline B - Foreign Influence

The Applicant is a native born American, who has worked in the defense industry since 1971 (TR at page 60 line 13 to page 65 line 9, and Applicant's Exhibit (AppX) B). He retired from the Naval Reserve as a Lieutenant in 1994 (AppX B at page 8).

1.a.~1.c. In 2001, the Applicant married a Russian national (TR at page 34 line 3 to page 41 line 25). She is an architect, and has never worked for the Russian government, nor has she ever been a member of the communist party (*Id*). Having satisfied her residency requirements, she has applied for U.S. citizenship (TR at page 41 lines 1~25, at page 68 line 19 to page 69 line 2, and AppX C). The Applicant's 12 year old Russian step-daughter resides with the Applicant and his wife in the U.S. (TR at page 29 line 9 to page 32 line 21, and at page 48 lines 11~18). She testified, and to the undersigned appeared to be just like a normal 12 year old American girl (TR at page 29 line 9 to page 32 line 21). The Applicant's 78 year old Russian mother-in-law resides in Russia (TR at page 42 lines 1~21, at page 46 lines 8~17, and at page 52 lines 3~25). She lives in an apartment, worth about \$13,000, that is owned by the Applicant's spouse (*Id*). The Applicant's net worth in the U.S. is \$240,000~\$270,000 (TR at page 71 lines 11~16).

### Mitigation

Those who know and/or supervise or work with the Applicant think most highly of him (TR at page 15 line 7 to page 17 line 17, at page 19 line 3 to page 23 line 2, at page 24 line 13 to page 27 line 8, and AppXs A and D).

## POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's

judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

The Applicant is a native born American who has worked in the defense industry since 1971. He is also a retired Naval officer. However, in 2001, he married one who is a citizen of Russia. The Applicant's step-daughter and mother-in-law are also citizens of Russia. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in Russia or the U.S. can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 69 lines 13~20). The first mitigating condition is therefore applicable as "the 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 the individual to choose between loyalty to the persons involved and the United States." As to his wife's financial interest in Russia, the \$13,000 apartment is not substantial in view of the Applicant's \$240,00~\$270,000 net worth in the U.S. Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

## FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

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

Richard A. Cefola  
Administrative Judge