

DATE: August 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-10573

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a native of Russia, obtained and used his Russian passport after he became a naturalized U.S. citizen in September 2000. His surrender of his foreign passport and application to renounce his foreign citizenship are not sufficient to mitigate his recent exercise of Russian citizenship. Foreign influence concerns are not mitigated where family members, including his father, stepmother, and father-in-law, are resident citizens of Russia. Clearance is denied.

STATEMENT OF THE CASE

On July 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed 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. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign influence (Guideline B) and foreign preference (Guideline C).

On July 27, 2005, Applicant responded to the SOR. He requested a decision without a hearing and submitted copies of two letters written in the Russian language. The government prepared a File of Relevant Material (FORM) consisting of eight items on December 23, 2005, which was forwarded to Applicant by letter dated December 28, 2005. Applicant was given 30 days from receipt of the FORM to file a response.

On January 31, 2006, Applicant responded to the FORM, submitting two additional documents in Russian. Department Counsel indicated on February 8, 2006, that the government had no objection to Applicant's rebuttal. The case was assigned to me for a decision without a hearing on March 2, 2006.

On June 22, 2006, Applicant was ordered to provide English translations of those documents previously submitted in Russian if he wanted the documents to be considered. On July 7, 2006, Applicant timely submitted English translations. The government having no objection thereto, the translations and related correspondence were marked and admitted as

Applicant Exhibits B through F. Applicant's response to the FORM, including the documents in Russian, was admitted as Exhibit A.

FINDINGS OF FACT

DOHA alleged foreign preference concerns related to Applicant exercising dual citizenship (U.S. and Russia); applying for and possessing a Russian passport after he had become a naturalized U.S. citizen; using a Russian passport issued May 2002 in preference to his U.S. passport to enter and exit Russia in 2002; and working at a scientific research institute and at the academy of science in Russia from 1983 to 1994. Foreign preference concerns were also alleged because of the Russian citizenship and residency of Applicant's father, stepmother, half-sister, parents-in-law, cousin, and a friend, and Applicant's travel to Russia in 2002. In his Answer, Applicant denied he had ever acted in preference to any country over the U.S., but admitted he had possessed and used a Russian passport as alleged, having been required by Russian authorities to obtain his Russian passport so that he could travel to Russia on vacation with his family. He had since twice requested the forms required to renounce his Russian citizenship. He also admitted his former employment for the scientific institute in Russia before he immigrated to the U.S. Applicant acknowledged the Russian citizenship of his family members (mother-in-law deceased) and close associate as well as his travel to Russia in 2002, citing the absence of any express prohibition on foreign travel in DoD Directive 5220.6.

Applicant's admissions are incorporated as findings of fact. After a thorough consideration of the government's FORM and Applicant Exhibits A through E, I make the following additional findings:

Applicant is a 45-year-old senior engineer who has worked for his current employer, a defense contractor, since January 2000. He seeks a security clearance for his duties.

Applicant was born in Russia (then the Union of Soviet Socialist Republics) in October 1960. From September 1978 to June 1983, Applicant attended a university of aviation technology in Russia. On earning his diploma as a construction engineer in June 1983, Applicant was automatically commissioned as a lieutenant engineer in the Soviet Army Reserve. He served on inactive status in the Reserve from July 1983 to January 1994 while employed in the civilian sector. From August 1983 to April 1993, he worked for a Russian scientific (radiotechnic) research institute, and from March 1993 to January 1994 for the Russian academy of science.

In about July 1994, Applicant and his Russian-born spouse, whom he married in August 1984, immigrated to the United States with their two children (a daughter born in October 1986 and a son born in December 1988).⁽²⁾ He worked as a senior engineer for a mini-circuit company in the U.S. from mid-June 1995 to early August 1999 when he was involuntarily terminated. The reason for his firing is not of record. Applicant claims he was "caught by surprise" and given no explanation for his termination.

After five months of unemployment, Applicant started as a senior engineer for his current employer in January 2000. In September 2000, Applicant and his spouse became dual citizens (Russia and the U.S.) on their naturalization in the U.S. Their two children acquired derivative U.S. citizenship on their parents' naturalization, making them dual citizens as well.

In September 2001, Applicant acquired his U.S. passport. In conjunction with a trip to Russia scheduled for mid-June 2002 with his family to visit relatives, Applicant requested a visa from the Russian Consulate so that he could travel to Russia on his U.S. passport. He was refused the visa and advised he would have to obtain a Russian passport (in exchange for his U.S.S.R. passport expired in 1999) since he was still a Russian citizen. Applicant requested to terminate his Russian citizenship, but was informed any application for renunciation would first require approval from the Russian Consul General. Feeling he had no choice but to acquire the foreign passport as he already had his family's airline tickets, Applicant obtained his Russian passport issued May 7, 2002, and valid for five years. He traveled to Russia on this passport for a two-week stay with his family from mid-June 2002 to early July 2002.

Needing a security clearance for his job as a senior engineer with the U.S. defense contractor, Applicant executed a security clearance application (SF 86) on June 20, 2003. Applicant disclosed his dual citizenship and possession of valid passports with the U.S. and Russia. He provided naturalization data for those family members who had become U.S.

citizens and were living in the U.S. (mother in October 1999, a half-sister in December 2000, and his spouse in September 2000) and disclosed that his father, another half-sister, and his parents-in-law were Russian resident citizens. Applicant also listed his education at the aviation technology university in Russia, his past employment with the Russian research institute and academy of science, his service in the Russian (then Soviet) Army Reserve, and his travel to Russia to visit relatives in 2002. He also disclosed that he had been involuntarily terminated from his job in the U.S. in August 1999.

On June 15, 2004, Applicant was interviewed by a contract investigator for the Defense Security Service in part about his foreign ties, including his possession of a current Russian passport. Applicant explained that he had been refused a visa to travel to Russia on his U.S. passport, so felt he had no choice but to obtain a Russian passport in 2002 which was current as of his interview. He denied using his Russian passport on any occasion other than the trip to Russia with his family in 2002 to see relatives, and he expressed his intent to begin the paperwork to officially relinquish his Russian citizenship and passport. Applicant related he had not been on active duty while in the Soviet Army Reserve, and had turned in his military identification in January 1994. Applicant denied receiving any benefits or having any financial or business interests in Russia. As for his contacts with foreign citizens, Applicant related that in addition to his father, stepmother, and half-sister, he had telephone contact with a cousin and with a friend once every two to three months. Applicant maintained that his and his family's loyalty was "completely" to the U.S. and none of his foreign relations were employed in intelligence, military, or security organizations.

On April 20, 2005, Applicant sent his Russian passport to the Consulate General of the Russian Federation, indicating that he and his children no longer desired to be Russian citizens, and he requested the necessary forms to renounce Russian citizenship.⁽³⁾ With the issuance of the SOR on July 12, 2005, Applicant was notified of the DoD policy guidance issued August 16, 2000, to the effect that security clearance must be denied or revoked where an applicant has a foreign passport unless permission is obtained from the U.S. government for its possession and use.⁽⁴⁾ Having received no response from the Russian Consulate to his request for citizenship renunciation, Applicant send a second letter asking for the forms and fee information on July 25, 2005.

On January 18, 2006, Applicant submitted his completed application to renounce his Russian citizenship to the Consulate General of the Russian Federation, along with his expired U.S.S.R. passport, his May 2002 Russian passport, a copy of his U.S. passport, and a translation into Russian of the identifying page of his September 2001 U.S. passport. The record is silent as to whether his renunciation had been approved.

As of January 2006, Applicant's father, stepmother, and a half-sister were resident citizens of Russia. Applicant's family members work in a hospital. His father-in-law, who is also a resident citizen of Russia, worked in the construction industry before he retired. Applicant's mother-in-law died in 2004. Applicant had telephone contact two to three times monthly as well with a cousin and with a friend who live in Russia. Applicant's friend works for a window manufacturing company. None of his relatives work for intelligence, military, or security organizations in Russia.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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.

After a complete review of the evidence of record, the following adjudicative guidelines are pertinent to this case:

Foreign Preference. 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. (¶ E2.A3.1.1)

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. (¶ E2.A2.1.1)

CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the government has established its case with respect to Guideline C, foreign preference, and Guideline B, foreign influence.

Guideline C, foreign preference concerns are raised when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., as he or she may then be prone to provide information or make decisions that are harmful to the interests of the U.S. Raised in Russia under the former Soviet regime, Applicant graduated from an aviation technology university, spent more than 10 years as an officer in the Soviet and later Russian Army Reserve, and worked at a scientific research institute and then for the academy of science in Russia, before emigrating to the U.S. in 1994 with his family. The record is silent as to his specific duties, but it is reasonable to assume they were in the furtherance of the foreign government in preference to the U.S. (*see* ¶ E2.A3.1.2.9 *Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States*). Service in a foreign military, even if not in active call up (*see* ¶ E2.A3.1.2.2 *Military service or a willingness to bear arms for a foreign country*), accepting educational benefits from a foreign country (*see* ¶ E2.A3.1.2.4 *Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country*), and possession and/or use of a foreign passport (*see* ¶ E2.A3.1.2.2 *Possession and/or use of a foreign passport*) are all indicators of potential foreign preference that apply in this case. After he became a naturalized U.S. citizen, and held a valid U.S. passport, Applicant obtained a Russian passport and used it in preference to his U.S. passport to travel to Russia in June 2002. While status as a dual national is not necessarily indicative of a foreign preference (*see* E2.A3.1.3.1 *Dual citizenship is based solely on parents' citizenship or birth in a foreign country*, as mitigating of foreign preference concerns) his acquisition and use of the Russian passport constitutes an active exercise of foreign citizenship and raises foreign preference concerns.⁽⁵⁾ Therefore, disqualifying condition ¶ E2.A3.1.2.1 *The exercise of dual citizenship also applies.*

As clarified by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence in August 2000, possession and/or use of a foreign passport raises doubt as to whether the person's allegiance to the U.S. is paramount and it could also facilitate foreign travel unverifiable by the United States. As of his June 2004 interview with the DSS contract investigator, Applicant was on notice that his acquisition of his Russian passport was of concern to the Department of Defense. It is not clear why he waited until April 2005 to inquire of the Russian consulate about the process for citizenship renunciation. After he received the SOR, he reiterated his request in July 2005, and filed his application to renounce in January 2006. With the surrender of his Russian and expired U.S.S.R. passports, the DoD requirements pertaining to foreign passports have been satisfied. Moreover, an expressed willingness to renounce foreign citizenship is mitigating of foreign preference concerns (*see* ¶ E2.A3.1.3.4). There is no evidence that the Russian authorities have formally acted on his request, but his submission of the required documentation is sufficient indicia of his willingness to renounce to apply ¶ E2.A3.1.3.4 in his favor.

Applicant's application to renounce his Russian citizenship is consistent with his U.S. citizenship and confirmation of his intent to remain here. There is no evidence of any ongoing financial or business ties to Russia, and his foreign military service and employments occurred before he acquired U.S. citizenship. Mitigating condition ¶ E2.A3.1.3.2 *Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship* therefore also applies to his benefit. Yet, the risk of future foreign preference cannot be evaluated without considering the strength of his ties to his native Russia. Applicant invested more than ten years of his time and talent in the employ of the Russian scientific community. He obtained and used his Russian passport to travel to Russia to see his family 12 years after he emigrated. His ties to his relatives in Russia (which raise issues of undue foreign influence, see below), heighten the risk of him acting in foreign preference. He and his children are still citizens of Russia, so they remain subject to Russian authority and law as of January 2006. Little is known of Applicant's lifestyle, his activities, or his associates, in the U.S. While his very recent efforts to renounce his foreign citizenship and his surrender of his foreign passport are viewed favorably, an unacceptable risk of foreign preference persists. Accordingly, SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.e, are resolved against him.

Under Guideline B, 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. (Directive ¶ E2.A2.1.1.) Although Applicant's spouse and two children, the persons to whom he is closest, enjoy the rights and protections afforded U.S. resident citizens, his father, mother-in-law, and a half-sister, are resident citizens of Russia. As of June 2004, Applicant had ongoing telephone contact with his relatives as well as with a cousin and a friend on the order of every two or three months. Applicant's father-in-law also is a Russian resident citizen. The record is silent as to Applicant's relationship with his father-in-law, but the DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an Applicant's ties but also of his spouse's ties to a foreign country and the possible effect they may have on Applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002). In determining Applicant's suitability for continued access, disqualifying condition 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,* must be considered.

Applicant submits that his contact with his relatives and friend in Russia is infrequent. Assuming it has not increased since June 2004, once every two or three months could qualify as infrequent. However, mitigating condition ¶ E2.A2.1.3.3 *Contact and correspondence with foreign citizens are casual and infrequent,* requires also that the contact be casual. The strength of Applicant's tie to his foreign relatives is seen in his willingness to comply with Russian requirements to obtain a Russian passport so that he could visit them.

Foreign influence concerns raised by the foreign citizenship and/or foreign residency of close family members may be mitigated where it can be determined that the relatives 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 (*see* MC E2.A2.1.3.1). Applicant's relatives and his friend are not employed in the service of a foreign government or military. They apparently work in a hospital, and his friend is employed by a window glass manufacturer. Applicant's father-in-law worked in construction before he retired. The same cannot be said of Applicant himself, however, as he was in the direct employ of the academy of science and a scientific research institute. Although he is no longer in Russia and there is no evidence that he has any contacts with his former employer or coworkers, his father still resides in the same city where Applicant worked.

The inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. The foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (*See* ISCR Case No. 00-0628, App. Bd. Feb. 24, 2003.) As long as there is a tie of obligation or affection to a person who is subject to a foreign government's jurisdiction/laws and/or is within physical reach of the foreign authorities, undue foreign influence cannot be completely ruled out. Although not specifically stated in the adjudicative guideline, the particular foreign country of which the relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens and residents. Countries with strong

democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S. Relations between the U.S. and Russia are more favorable than they were under the Soviet regime. The U.S. State Department reported as of August 2005, "The United States and Russia share common interest on a broad range of issues. Among the most of these is the work underway to reduce drastically our strategic arsenals. U.S. and Russian missiles are no longer targeted at the other's homeland, and we have become strong allies in the global war on terrorism." However, Russia's human rights record remains uneven, and has worsened in recent years in some areas.⁽⁶⁾ Moreover, Russia inherited a significant intelligence capability from the former Soviet Union, which continues to focus with increasing sophistication on collecting information concerning the U.S.⁽⁷⁾ Applicant has the burden of presenting substantial evidence that the potential for pressure, coercion, exploitation or duress is sufficiently low to overcome the government's security concerns. That burden is not met where the government is left to speculate as to the activities and affiliations of his relatives and friend in Russia. SOR ¶¶ 2.a, 2.b (as to father-in-law), 2.c, and 2.d of the SOR. As for ¶ 2.e, foreign travel in and of itself is not a disqualifying condition but rather evidence of the bond Applicant shares with his family members.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: For the Applicant

DECISION

In light of all 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.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. The date of their immigration is not of record. Reported date of first U.S. employment is June 15, 1995. (Item 4)

3. As per the English translation (Ex. B), Applicant indicated in part, "At the present time, both my children [names omitted] and I have dual citizenship: both Russia and the United States. We constantly live within the borders of the United States, and it is for this reason that we would like to be considered only the citizens of the United States. We ask you to return our passports to the appropriate authorities of the Russian Federation." The postage costs (Item 2) appear to corroborate a mailing of the passports at that time. However, when he answered the SOR in July 2005, he indicated he was in possession of a Russian passport, and with his more recent application to renounce filed in January 2006 (Ex. A and D), Applicant apparently sent his Russian passport, as well as a copy of his U.S. passport and the translation of the U.S. passport into Russian. It is conceivable although not clear that the Russian Consulate returned his passport to him with the forms to renounce his Russian citizenship. Certainly, it appears that with his January 9, 2006, application to renounce, he had completed the process of surrender of his foreign passport. It is not clear whether his spouse ever took any action to renounce her Russian citizenship. Concerning his spouse's citizenship, Applicant indicated on his SF 86 that she was a citizen only of the U.S.

4. In his memorandum of August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) stated, in pertinent 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 mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. 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 States government.

5. Dual citizenship is recognized by the United States, but it is not encouraged. Dual citizenship in and of itself is not sufficient to warrant an adverse clearance decision. (*See* ISCR Case No. 99-0454, App. Bd. Oct. 17, 2000). Under Guideline C, the issue is whether an applicant has shown a preference through his actions for a foreign country. Among the specific behaviors which raise significant Guideline C issues is possession of a foreign passport.

6. *See* Items 7 and 8.

7. *See* Item 6.