

DATE: November 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11391

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Lougran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's casual and infrequent foreign contacts with his father, mother and other relatives in Russia pose no security risk. He is no longer associated with anyone else in Russia or with the Russian government and cannot be coerced or blackmailed. He has surrendered his Russian passport to the proper authorities and it has been cancelled. He has renounced his Russian citizenship. Clearance is granted.

STATEMENT OF THE CASE

On July 12, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on July 29, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 9, 2005. A notice of hearing was issued on September 15, 2005, scheduling the hearing for October 4, 2005. At the hearing the Government presented four exhibits. The Applicant presented six exhibits and testified on his own behalf. The record was left open to allow the Applicant an opportunity to support his testimony with documentation. The Applicant submitted one Post-Hearing Exhibit. The official transcript (Tr.) was received on October 17, 2005.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 40 years of age and holds a master's Degree in Physics. He is employed as a Scientist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Russia. He and his wife, who was also born in Russia, came to the United States with their children in 1994. They came to the United States as refugees of Jewish origin. The Applicant, his wife and his children became United States citizen in March 2001.

The Applicant has a mother, father, step-father and half-sister, a mother-in-law and two friends who are citizens of and residents of Russia. The Applicant's mother and father are retired doctors and his step-father is a retired physicist. (Tr. p. 30-31). In the last five years the Applicant has spoken to his father by telephone about once a year and has seen him one time. The Applicant's mother comes to visit the Applicant in the United States about once or twice a year. The Applicant is currently in the process of trying to bring his step-sister from Russia to the United States. The Applicant's half-brother, an engineer, and his family have resided in the United States since 1998 and are awaiting their United States citizenship.

None of the Applicant's relatives mentioned in the SOR work for the Russian government or any government. None of them are in a position to be exploited or blackmailed in any way. (Tr. 17).

In the past eleven years since the Applicant left Russia, he has been back on three separate occasions, once in 1999, 2002 and 2003 for a total of twelve days. (Tr. p. 34).

The Applicant has purchased a condominium in the United States. The total value of his assets considering the equity in his home in the United States are \$300,000. (Tr. p. 42). He has no assets of any kind in Russia.

The Applicant was employed as a physicist from August 1986 until November 1994 by the Institute of Applied Physics in Russia which was run by the Government of Russia. He was in the field of experimental physics in the area of physical oceanography. He has never applied for a security clearance in Russia nor was he privy to any state secrets. (Tr. p. 33).

The Applicant testified that the job he does now in the United States may be of interest to the Russian intelligence agencies. (Tr. p. 38). At one point the Applicant was unwilling to relinquish his expired Russian passport to Russian authorities because he did not want to reveal that he was in the process of obtaining a United States Department of Defense security clearance and have them watch closely during his future visits to Russia or in the event that he might need to travel to Russia immediately for a family emergency. (See Government Exhibit 2). After learning of the DOD policy that prohibits one from possessing a foreign passport while holding a security clearance, the Applicant relinquished his Russian passport to the Russian authorities. (See Applicant's Exhibit A and his Post-Hearing Exhibit).

Four letters of recommendation submitted on behalf of the Applicant by coworkers and professional associates indicate that the Applicant is considered to be highly intelligent and inventive. He has established strong ties with his community. He is considered trustworthy and honest. He is a tireless employee who often goes beyond requirements to insure that a job is done well and on schedule. He has been promoted at a pace far above scientists with similar experience and job classification. (See Applicant's Exhibit C, D, E and F).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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. 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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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 the loyalty of the person(s) involved and the United States;

3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination

under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. Disqualifying Condition (1) *an immediate family member, or 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. However, mitigating Conditions (1) *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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 the loyalty of the person(s) involved and the United States* and (3) *Contact and correspondence with foreign citizens are casual and infrequent* are applicable. Although the Applicant's mother, father, step-father, half-sister, mother-in-law and two friends are citizens and residents of Russia, none of the individuals are associated with the Russian government or any government nor are they in a position to place foreign influence on the Applicant, or in a position to be exploited by the Russia Government or any government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Therefore, I conclude that it would be unlikely that the Applicant would ever consider any attempt at exploitation. Furthermore, the Applicant's contacts with his foreign relatives and friends are very limited, and are not of a nature to influence his security worthiness. The Applicant has cut almost all of his ties with Russia, except his contact with his mother. The Applicant has made it clear that he understands his responsibility to the United States in holding a security clearance. Based on the foregoing, the Applicant does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

1.e.: For the Applicant

1.f.: For the Applicant

1.g.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge