

KEYWORD: Foreign Influence

DIGEST: Applicant's parents, father-in-law, and two friends are citizens and residents of Russia. There is no indication of their occupations. Applicant's eligibility for assignment to a sensitive position is denied.

CASENO: 04-11670.h1

DATE: 02/14/2006

DATE: February 14, 2006

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ISCR Case No. 04-11670

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant's parents, father-in-law, and two friends are citizens and residents of Russia. There is no indication of their occupations. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On July 19, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny an application for a position of public trust for Applicant. The action was taken under Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline B (Foreign Influence).

On August 5, 2005, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On September 22, 2005, the Applicant received a complete copy of the government's file of relevant material (FORM) dated August 22, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On September 27, 2005, the Applicant responded to the FORM. On November 28, 2005, I was assigned the case.

FINDINGS OF FACT

In her response to the SOR, Applicant admits her mother, father, father-in-law, and two friends are citizens and residents of Russia. She also admits visiting Russia in 1994, 1995, and 1997. Those admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 44-year-old analyst who has worked for a defense contractor since December 1998, and is seeking to

obtain a position of public trust.

Applicant and her husband were born in Russia. In January 1993, they came to the U.S. and received their green cards in 1994. In 1999, they applied for U.S. citizenship and in August 1999 both Applicant and her husband became U.S. citizens. They chose to become U.S. citizens because they were living in the U.S. and felt they should become citizens and felt the U.S. was their home. (Gov Ex 5)

Applicant's parents live in Russia. She talks with them every two to three weeks. She has made three trips to Russia to visit her parents, in 1994, 1995, and 1997. She has no plans to visit Russia. Her son was born in the U.S. in July 1994 and she took him to Russia to see his grandparents. Her parents are thinking about moving to the U.S. Her father-in-law lives in Russia. Her mother-in-law became a U.S. citizen and lives in the U.S. They are divorced. Her husband talks to his father and a cousin once or twice a year. He talks with his mother in the U.S. every week or every other week. Applicant talks and sees her mother-in-law daily.

Appellant also talks to a friend in Russia every three to five months and sends that friend cards two times a year on special occasions. She has another friend in Russia to whom she sends cards twice a year on special occasions. There is nothing in the record indicating the occupations of her parents, father-in-law, or two friends.

POLICIES

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."⁽¹⁾ To be eligible to occupy an Information Systems Position designated ADP II/III, an applicant must meet the security guidelines contained in the Regulation. The standard that must be met is that based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.⁽²⁾

The Regulation sets out the adjudicative guidelines for making trustworthiness determinations. Appendix 8 of the Regulations sets forth adjudicative guidelines for determining trustworthiness, and lists the disqualifying conditions and mitigating conditions for each guideline. The adjudicative guidelines at issue in this case is Guideline B Foreign Influence. Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

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. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁽³⁾

DoD contractor personnel are afforded the rights to the procedures contained in the DoD Directive before any final unfavorable access determination may be made.⁽⁴⁾ Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a trustworthiness determination case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons in a position of trustworthiness. Additionally, the government must prove controverted facts alleged in the SOR.

Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁵⁾ Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽⁶⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."⁽⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽⁸⁾ Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation, Appendix 8.

A person in a position of trustworthiness enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. 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.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, 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. The Government established that Applicant's mother, father, father-in-law and two friends are citizens and residents of Russia. Disqualifying Condition (DC) 1 (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*) applies.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ⁽⁹⁾ An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

The record is silent as to the occupation of her mother, father, father-in-law, and two friends. Without such evidence, I cannot determine these individuals are not employees of a foreign intelligence service, 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. I find against Applicant as to SOR paragraphs 1.a, 1.b and 1.c.

If the occupation of her two friends were known and they were not agents or a foreign power or in a position to be exploited by a foreign power, then mitigating Condition 3 (E2.A2.1.3.3. *Contact and correspondence with foreign citizens are casual and infrequent*) would apply because

Applicant talks with one of her friends every three to five months and sends cards to each of them twice a year, which is casual and infrequent contact.

Applicant traveled to Russia three times during the last 11 years to see her parents. The last trip occurred more than eight years ago in 1997. Traveling to Russia to see her parents shows she is close to her parents and wanted them to meet her son, but that is not a security concern. I find for Applicant as to SOR paragraph 1.d.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age

and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for assignment to sensitive duties. Eligibility is denied.

Claude R. Heiny

Administrative Judge

1. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

2. Regulation ¶ C6.1.1.1.

3. Dod 5200.2-R, Appendix 8.

4. DoD 5200.2-R, ¶ C8.2.1.

5. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

6. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

7. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

8. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

9. ISCR Case No. 98-0419 (April 30, 1999) at p.5.