

KEYWORD: Foreign Influence

DIGEST: Applicant is a 41-year-old married man, who since June 2003 has been employed as a product support technician specialist 3 for a defense contractor. Before that, Applicant honorably served in the U.S. Air Force over 21 years and retired as a master sergeant. He held security clearances at various levels during his entire Air Force career. Foreign influence concerns arose during the application process to upgrade his clearance as a result of his recent marriage to a Russian citizen. Based on the totality of circumstances, Applicant has mitigated these concerns. Clearance is granted.

CASE NO: 04-11950.h1

DATE: 06/14/2006

DATE: June 14, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11950

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Roger Cartwright, Esq.

SYNOPSIS

Applicant is a 41-year-old married man, who since June 2003 has been employed as a product support technician specialist 3 for a defense contractor. Before that, Applicant honorably served in the U.S. Air Force over 21 years and retired as a master sergeant. He held security clearances at various levels during his entire Air Force career. Foreign influence concerns arose during the application process to upgrade his clearance as a result of his recent marriage to a Russian citizen. Based on the totality of circumstances, Applicant has mitigated these concerns. Clearance is granted.

STATEMENT OF THE CASE

On July 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its decision why DOHA proposed to deny or revoke his access to classified information. [\(1\)](#) In March 2004, Applicant married his fourth and current wife in Russia. His wife's parents are resident citizens of Russia. It was this marriage that formed the basis for DOHA to issue Applicant the SOR in this case. The SOR alleges a security concern under Guideline B for foreign influence. Applicant replied to the SOR on August 10, 2005, and requested a hearing. Department Counsel indicated he was ready to proceed on September 6, 2005, and the case was assigned to me on September 19, 2005.

On October 11, 2005, DOHA issued a notice of hearing scheduling the case to be heard on October 25, 2005. The case was conducted as scheduled 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 presented five exhibits, which were marked as Government Exhibits (GE) 1 through 5, and admitted without objection. Applicant presented 19 exhibits, which were marked as Applicant Exhibits (AE) A through S, and admitted without objection. DOHA received the transcript on November 9, 2005.

FINDINGS OF FACT

In his Answer, Applicant admitted the SOR allegations. His admissions are incorporated into my findings, and after a thorough review of the record, I make the following additional findings of fact:

Applicant testified during the hearing, and I found his testimony credible in its entirety. He is a 41-year-old married man. Since June 2003, he has been employed as a product support technician specialist 3 for a defense contractor. He currently holds a secret clearance and seeks to upgrade his clearance to a higher level as a requirement of his employment. Tr. 25.

From December 1981 to August 2003, he honorably served in the U.S. Air Force, retiring as a master sergeant, pay grade E-7. His primary specialty while serving in the Air Force was Aircraft Structural Maintenance Craftsman. Including his Air Force and defense contractor time, Applicant has successfully held various levels of clearances for 24 years. Answer to SOR.

Applicant completed his high school equivalency examination in January 1981. He attended the Community College of the Air Force from March 1999 to September 2002, and was awarded an associate's degree.

From January 1985 to December 1989, Applicant was married to his first wife. That marriage ended in divorce. From December 1989 to January 1994, Applicant was married to his second wife. That marriage ended in divorce. From November 1994 to July 2002, Applicant was married to his third wife. That marriage ended in divorce. Applicant has three children from his first two marriages, a 20-year-old daughter, an 18-year-old son, and a 13-year-old daughter. The two youngest children live with Applicant and his fourth wife.

Applicant met his present wife at an off-base club in South Korea in December 2002. At the time, he was still on active duty in the Air Force and on an extended temporary duty assignment from his parent command in the U.S. Before Applicant's wife came to work at a club in South Korea, she was a citizen and resident of Russia. In response to a posting in her home town, she applied for a position as a dancer leading to her signing a one-year contract to work at a club in South Korea. Applicant's wife has a severe hearing loss, and can only hear with difficulty through the use of hearing aids.

Applicant left Korea in February 2003, but not before establishing a serious relationship with his wife-to-be. After returning to the U.S., Applicant remained in close contact with his future wife and returned to Russia in March 2004 to marry her. It was at that time, he met his wife's immediate family consisting of her mother, father, and a younger brother, all citizen residents of Russia. Applicant's interaction with his in-laws was limited to meeting them on the night before the wedding and the day of the wedding. He was only able to communicate with them through an interpreter. Applicant's wife remained in Russia after the wedding awaiting a visa to immigrate to U.S. In March 2005, Applicant returned to Russia for the sole purpose of escorting his wife to the U.S. Applicant did not meet or see any of his in-laws on his return visit to Russia. Applicant and his wife have no plans to return to Russia. Tr. 30

Applicant's father-in-law is employed as a foreman for a lumber company, and his mother-in-law is employed as a bookkeeper for a small food store. Tr. 42. His brother-in-law "has something to do with automobiles." Tr. 41. None of Applicant's in-laws are employed by or are agents the Russian government.

As a spouse of a U.S. citizen, Applicant's wife was allowed to enter the U.S. on a nonimmigrant K-3 spouse visa. At the time of hearing, Applicant's wife was in the process of getting her permanent resident visa (green card). It is also her desire to become a U.S. citizen as soon as she is eligible. Applicant's wife is diligently studying English and making every effort to assimilate to life in the U.S. Applicant is actively assisting his new wife with her visa issues to include retaining an immigration attorney to guide them through the process. Applicant's wife speaks to her parents by telephone every seven-to-ten days to check on their welfare. Tr. 38.

Applicant estimates his home to be worth \$226,000.00. He owns an automobile valued at \$20,000.00, and a motorcycle valued at \$10,000.00. All of his bank accounts are in the U.S. Neither Applicant nor his wife have any assets in Russia. Applicant's wife does not send any money to any family members in Russia. Applicant's wife has no assets in Russia and does not stand to inherit any property or assets. Tr. 30.

Applicant's 21-year Air Force career service record is exemplary. It is replete with numerous awards, decorations, and evaluations reflecting top notch performance. His evaluation from his defense contractor employer is equally impressive. Letters of reference from former supervisors and colleagues speaks of his trustworthiness, superior performance, and dedication to his family and country. AE A through S.

Department Counsel submitted U.S. Department of State documents, which stated among other things that Russia's human rights record remains uneven. GE 3, GE 4. No evidence was offered that linked Applicant's in-laws to any such abuse or intimidation by the Russian government.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or

absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

The only purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ There is no presumption in favor of granting or continuing access to classified information.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security clearance case is less than a preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline B for foreign influence, a security clearance risk exists 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.

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 brought under control or used as a hostage by a foreign intelligence or security service. Concerning family ties, the language of Guideline B does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country.⁽¹¹⁾ 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.⁽¹²⁾

Under SOR, ¶¶ 1.a. through 1.d., based on the record evidence as a whole, the government has established its case under Guideline B. The concern here is Applicant's Russian wife, and in-laws residing in Russia, are persons to whom Applicant has close ties of affection *or* obligation. Applicant's wife remains in contact with her parents by telephone every seven-to-ten days. Applicant did travel to Russia two times for the purpose of marrying his wife and escorting her to the U.S. Collectively, these circumstances raise a security concern due to the potential for foreign influence.

Applicant served over 21 years in the Air Force and held a clearance the entire time. When he retired from the Air Force, he maintained his clearance with his defense contractor employer up until the present time, cumulatively holding a clearance exceeding 24 years without incident. His impeccable service record reflects sustained superior performance.

Disqualifying condition applicable under Guideline B raised as a result of Applicant's marriage to a Russian wife, and having in-laws in Russia is: ¶ 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.*

Mitigating conditions applicable under Guideline B are: E2.A2.1.3.1 *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 loyalty to the person(s) involved and the United States, and E2.A2.1.3.3: Contact and correspondence with foreign citizens are casual and infrequent.*

The record evidence shows Applicant's in-laws are not Russian agents, and so the issue under MC 1 is if the family members or associates are in a position to be exploited by the Russian authorities. Because Russia has manifested behavior adverse to the United States, Applicant has the burden to show his family ties to Russia do not pose a security risk or concern. On this point, I note neither his mother-in-law, father-in-law, nor brother-in-law (in-laws) are employed by or connected to the Russian government and therefore vulnerable to pressure from the government.

Likewise, his in-laws are not associated with a political, scientific, commercial, or other activity that would benefit from obtaining United States national security information. Applicant barely knows his Russian in-laws and is only connected with them through his wife, who lives with him in the U.S. Applicant has clearly demonstrated his past loyalty to the U.S. through his years of honorable service in the Air Force while holding positions of trust and responsibility. His wife has done everything possible to assimilate in the U.S. to include taking all reasonable steps to become a U.S. citizen and studying English.

Neither Applicant nor his wife have any plans to visit Russia. Applicant's wife's contact with her family is limited to telephone contact approximately twice a month. Applicant rarely speaks to his in-laws, and when he does, it can best be characterized as superficial given the existing language barrier. Such limited contact can fairly be characterized as casual and infrequent. Although Applicant's wife speaks to her family on a more frequent basis, her social contacts cannot be imputed to Applicant. Given these circumstances, there is not a reasonably foreseeable risk⁽¹³⁾ that his family ties might be exploited.

Although MC 1 and 3 are applicable mitigating conditions, the analysis does not necessarily end, as other facts and circumstances may mitigate the security concern as well. Applicant has honorably served his country and has a proven track record of being trusted with the nation's secrets. His ties or connections to the United States are substantial and deserving of consideration in mitigation. Since Applicant's wife's arrival in the U.S., she can fairly be described as a model immigrant. She and her husband have retained the services of an immigration attorney to ensure they are correctly and actively taking all steps for Applicant's wife to become a U.S. citizen. He has substantial real property interests in the United States. Conversely, Applicant's wife has no property she can lay claim to in Russia. Hence, her entire social and economic life is in the U.S. In short, Applicant and his wife's whole life is based in the United States. These are examples of ties that bind most members of a participatory democracy such as the United States. His substantial ties to the United States reinforce and lend credibility to Applicant's pledge that he would resist and report any potential foreign influence or pressure by either coercive or non-coercive means. Guideline B is decided for Applicant.

In summary, the record evidence demonstrates Applicant has all the indicators of a loyal, industrious, mature, responsible, and trustworthy individual. After weighing the record evidence as a whole, it is my commonsense determination that the facts and circumstances show Applicant's ties to Russia do not pose an unacceptable risk or concern of foreign influence. In reaching my decision, I have considered the whole-person concept and the appropriate factors and guidelines in the Directive. And I have weighed the record evidence as a whole, and conclude the favorable evidence outweighs the unfavorable evidence. Under the totality of the facts and circumstances, I conclude Applicant has met his burden.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline B: FOR APPLICANT

Subparagraph 1.a : For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

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

Robert J. Tuider

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

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

10. *Egan*, 484 U.S. at 528, 531.

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

12. *Id.*

13. Consistent with the whole-person concept, the security-clearance process is about risk management. With a few notable exceptions (for example 10 U.S.C. § 986), it is not a black-and-white process, but it depends upon adjudicators and administrative judges to make a fair and impartial commonsense determination on a case-by-case basis.