

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applying whole person analysis, Applicant mitigated foreign influence security concerns relating to his parents and a sister living in a remote area of the Urals in Russia. Applicant emigrated almost ten years ago to U.S. with his wife, one child, and parents-in-law all of whom except Applicant are Jewish and they obtained refugee status. He has not returned to Russia. He holds a responsible position in U.S. industry. He knows and follows rules for all matters including security issues. He also mitigated foreign preference security concerns by revoking Russian citizenship and destroying his Russian passport before he knew the proper means of surrendering it. Clearance is granted.

CASE NO: 05-01054.h1

DATE: 05/17/2006

DATE: May 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01054

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Kathleen E. Voelker, Esq.

SYNOPSIS

Applying whole person analysis, Applicant mitigated foreign influence security concerns relating to his parents and a sister living in a remote area of the Urals in Russia. Applicant emigrated almost ten years ago to U.S. with his wife, one child, and parents-in-law all of whom except Applicant are Jewish and they obtained refugee status. He has not returned to Russia. He holds a responsible position in U.S. industry. He knows and follows rules for all matters including security issues. He also mitigated foreign preference security concerns by revoking Russian citizenship and destroying his Russian passport before he knew the proper means of surrendering it. Clearance is granted.

STATEMENT OF THE CASE

On March 31, 2005, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated May 9, 2005, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on August 1, 2005. On September 20, 2005, counsel for Applicant requested a hearing date in January 2006. A Notice of Hearing was issued November 18, 2005 for a hearing held on December 6, 2005, with the understanding that the record would be held open if additional evidence was not available at the time of the hearing. The Government introduced two exhibits at the hearing and requested that administrative notice be taken of six official government documents. The Applicant introduced ten and all were accepted into evidence. The Applicant and three others testified on his behalf. The transcript was received on December 16, 2005.

The record was left open at the request of Applicant until March 1, 2006, for receipt of additional evidence. On February 27, 2006, Applicant requested an extension of time until May 1, 2006, to which the government objected but,

in view of representations by Applicant, an extension was granted until April 3, 2006. Applicant submitted additional evidence on March 16, 2006, in the form of seven documents which were transmitted to me by the government on April 18, 2006, without objection. They were admitted into the record.

FINDINGS OF FACT

Applicant has denied all allegations under Foreign Preference-Guideline C and under Foreign Influence-Guideline B with explanatory information. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 43-year-old employee of a defense contractor working as a design engineer. He was educated in Russia with a master's degree and worked in a research institute on various avionics matters included fibre optics and radar which required that he have a security clearance. He emigrated to the U.S. in 1997 and became a citizen in 2003. He emigrated because his wife's maternal family are Jewish and wished to emigrate. He, his wife, and their son came to the U.S. with his parents-in-law. They were sponsored by his wife's great-aunt and her family who preceded them to the U.S. by several years. He was admitted into the U.S. as a "public interest" emigre. The others were admitted as refugees. He has never returned to Russia since coming to the U.S. and has no desire to do so.

Applicant owns no property in Russia and has never voted or paid taxes to Russia since he came to the U.S. He has voted several times in U.S. elections and has evidenced great pride in being allowed to participate in the electoral process (Tr. 52).

Applicant's parents and a sister are citizens of and living in a small city in the Ural mountains of Russia. His parents are elderly and retired. They have visited the U.S. three times since his emigration. He sends them no money as they are self sufficient, but did aid them financially on their trips to the U.S. He telephones his parents two or three times a month.. His sister and children have visited the U.S. twice with her children. His sister does clerical work for a private chemical company in the same town where the parents live. Her husband works for another chemical company in the same city.

At the time of hearing his first child, a 12-year-old son, was still a citizen of Russia but residing in the U.S. His second child, a five-year-old daughter, was born in the U.S. although she was deemed by Russia to be a citizen of Russia.

Also, at the time of the hearing Applicant held dual citizenship with Russia and the U.S. possessed a Russian passport

although he cut up the passport soon after his interview with an investigator in April, 2004, and before the SOR was issued. He did not believe himself to be a Russian citizen. At that time he did not understand the procedure for surrender of the passport and destroyed the passport before learning of it. Applicant obtained a U.S. passport in 2003. Before obtaining it he renewed his Russian passport as he needed it for a business trip to Italy since he had no other to use. He also traveled once to the Dominican Republic using his green card before he received a U.S. passport during a time when his Russian passport had expired.

Applicant began looking into the procedure for revocation of his and his family's citizenship after being interviewed by a government investigator and receiving the SOR. He investigated procedures to revoke his Russian citizenship and that of his immediate family members, but it took several months to learn the procedure and obtain the necessary forms. He followed the procedures but at the time of the hearing, he had not been advised of a decision by the Russian government. However, on August 4, 2005, the consulate of the Russian Federation in New York acknowledged receipt of the application but noted that it took six or seven months to finalize the process (Exh. F). On March 16, 2006, Applicant submitted translated copies of official Russian certificates of terminated citizenship for himself, his wife and both children (Exh. K). Thus, the Russian Federation no longer considers them citizens of Russia.

Applicant's wife works for a major U.S. bank as a document imaging specialist. They have a combined annual income of \$130,000.00. They purchased a home in 2002 for \$280,000.00 which has grown in value. Both he and his wife have contributory 401K plans with their employers (Tr. 94). He and his wife participate in activities similar to those enjoyed by other American families in a metropolitan area such as soccer and school activities.

Applicant is highly regarded for his diligence, integrity, and hard work in his job by his supervisors who testified for him (Tr. 20-57). He has an excellent work ethic and technical skills in design. He is also very respected by the representative of his company's principal U.S. Navy customer. His supervisors attribute much of the Navy's approval of their company's work to Applicant's skills and contribution to the program on which he is assigned (Tr. 37). His company evaluations are excellent (Exhs. A, B, and C). He loves his work, and believes what he is doing in the defense community is worthwhile and that he is giving something in return for his citizenship. Applicant follows the rules in the company for all matters and knows the rules for possible security issues require immediate reporting to security officers (Tr. 54 and 80).

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

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential

for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable guidelines for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship (E2.A3.1.2.1.), and the possession and/or use of a foreign passport.

Security concerns may be mitigated by a willingness to renounce dual citizenship (E2.A3.1.3.4.) Applicant has terminated his citizenship and that of his other immediate family members so they are no longer deemed citizens of Russia. Since he has done so and had never exercised citizenship of Russia the government withdrew that allegation (SOR par. 1.a) at the hearing (TR. 98). The allegation relating to his foreign passport has been mitigated by the destruction of the passport which he did soon after his security interview when it became apparent to him that he should not be holding a foreign passport. While he did not correctly comply with the surrender procedures set forth in the ASDC Memo of August 16, 2000, he was unaware of them at the time and took action before learning of them. While this was unfortunate, his testimony about it was credible and the destruction accomplished the same practical end as surrender. Since the passport has been destroyed there is no way to surrender it according to the memo.

Conditions under Foreign Influence Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Possible mitigating conditions that might be applicable to allegations relating to his family are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.) By definition parents and siblings are persons with close ties of affection. Thus, mitigating conditions are not applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is a person of substance and veracity who has a responsible position of trust and is doing a good job for his company. He provided sincere and credible testimony as to his relationship with his family, his motivations, and his loyalty to the U.S. The fact that he has lived in the U.S. for almost ten years and never returned to Russia indicates that he has a strong preference for the U.S. and has abandoned any remaining preference he might have once had for Russia.

He has established a successful life here building financial and familial ties to the U.S. While his parents and a sister still live in Russia, no reasonable question remains concerning his loyalty and ability to hold a security clearance. His contacts with his family are minimal to continue his familial obligations but he shows no deference to or loyalty to his birth country.

While there are problems with civil liberties and freedoms in Russia as stated in official documents (Exhs. I, II, and V) and as recently expressed by elected leaders of the United States, Applicant shows no loyalty to Russia and is a competent professional who expresses a knowledge of how to deal with any pressures that might be brought against him by an agent of a foreign government. Other official documents of the U.S. reflect a continuing need and desire for cooperation on a variety of social and technological fronts with Russia (Exhs. G, H, and I).

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: FOR APPLICANT

Subparagraph 1.a.: Withdrawn by Government

Subparagraph 1.b.: For Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge