

KEYWORD: Foreign Influence

DIGEST: Applicant married a Russian citizen who is a permanent resident of the U.S. She maintains close ties with her parents and her daughter who are citizens and residents of Russia, but Applicant has little or no contact with his wife's Russian relatives. Applicant has strong ties to the U.S. and would not compromise national security. Applicant mitigated the security concerns relating to possible foreign influence. Clearance is granted.

CASENO: 05-01707.h1

DATE: 03/31/2006

DATE: March 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01707

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant married a Russian citizen who is a permanent resident of the U.S. She maintains close ties with her parents and her daughter who are citizens and residents of Russia, but Applicant has little or no contact with his wife's Russian relatives. Applicant has strong ties to the U.S. and would not compromise national security. Applicant mitigated the security concerns relating to possible foreign influence. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On August 2, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically, Guideline B, Foreign Influence.

Applicant answered the SOR in writing on September 19, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on November 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on December 21, 2005. At the hearing, the government introduced Exhibits 1 through 8. Applicant provided Exhibits A through E, and the testimony of two witnesses. He also testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on January 11, 2006.

FINDINGS OF FACT

Applicant denied the factual allegations in the SOR. (Applicant's Answer to SOR, dated September 19, 2005.) After a complete and thorough review of the evidence in the record, I make the following findings of fact.

Applicant was born in April 1953. (Ex. 1 at 1.) His family has a long history of military service to the United States. (Tr. at 71.) His father is an Army veteran who fought in the Battle of the Bulge in World War II. (Tr. at 71.) After completing his military career, his father went on to serve as a flight instructor for the Army. (Tr. at 30-31.) Applicant's brother was a career officer in the U.S. Air Force who served in the Vietnam conflict. (Tr. at 30, 71.) Another of Applicant's brothers served as an Army pilot, and later as a civilian flight instructor for the Army. (Tr. at 31.) Both of Applicant's sons have served in the military; one recently returned from service as a Navy medic in the Gulf. (Tr. at 51.)

Applicant enlisted in the U.S. Navy in April 1970 and was later promoted to the rank of petty officer third class. (Ex. 1 at 5.) He served two tours in Vietnam. (Tr. at 71.) He is entitled to wear the National Defense Service Medal, the Vietnam Service Medal with two bronze stars, the Republic of Vietnam Campaign Medal, the Armed Forces Expeditionary Medal, and the Meritorious Unit Commendation. (Ex. B.) Applicant successfully held a security clearance while in the Navy. (Tr. at 60.)

He was married for the first time in 1973; the marriage ended in divorce in 1976. (Ex. 1 at 3.) They had one child of the marriage, a son whom Applicant raised. (Tr. at 72.)

After leaving active duty in March 1974, Applicant went back to technical school. (Ex. 1 at 1.) He also served in the Army National Guard for six months. (Ex. 1 at 5.)

Applicant opened a business repairing two-way radios and operated it for about 15 years. (Tr. at 72.) He was married for the second time in December 1980, and has one son from the marriage, born in 1983. (Ex. 1 at 3.) Applicant was divorced from his second wife in July 1987. (Ex. 1 at 3.) He then took a partner and ran a paging business for several years. (Tr. at 73.) He later sold his interest in the company. (Tr. at 74.)

In November 2000, Applicant began working for an electronics firm manufacturing weather radar systems and installing them at locations around the world. (Tr. at 73.) While working in the United Arab Emirates (U.A.E.) in 2002, Applicant met his future wife. (Tr. at 48, 73.)

In November 2002, after his work in the U.A.E. was finished, he took two weeks vacation and traveled to Russia to meet her parents. (Tr. at 48, 73; Ex. 1 at 5.) He also had some dental work done in Russia, because he could obtain good quality work at favorable prices. (Tr. at 48.)

In August 2003, Applicant began working for his current employer, a defense contractor. (Ex. 1 at 1; Tr. at 49.) He serves as an electronic technician, testing, calibrating, and installing electronic security systems. (Tr. at 61.) A co-worker praised his skill, dependability, and professionalism. (Tr. at 40.) The position requires a security clearance in order to gain access to certain locations-they are not required to handle classified materials. (Tr. at 40.) Applicant submitted an SF 86, Security Clearance Application, on August 19, 2003. (Ex. 1.)

He received an interim clearance, and traveled to Europe for several weeks to install security sensors. (Tr. at 49.) When that job was finished, Applicant and his future wife went to Russia for two weeks. (Tr. at 49.) According to Applicant, while he was overseas, if anyone asked where he was from he claimed he was Canadian, for security concerns and for his personal safety. (Tr. at 49.)

In February 2004 Applicant went to Europe again on business for three months. (Tr. at 50.) His future wife stayed with him. (Tr. at 50.) When that job was complete, Applicant returned to the U.S. and she went back to Russia. (Tr. at 50.) In August 2004, Applicant's fiancée received a visa to come to the U.S. (Tr. at 50.) Applicant picked her up at the airport, and they got married on August 25, 2004. (Tr. at 51; Ex. 2.) He reported it to his security officer when he returned to work two days later. (*Id.*) The security officer notified authorities of the change in Applicant's status. (Ex. 2.)

Applicant's wife is 44 years old. (Ex. 2.) She does not speak English very well. (Tr. at 35.) She operated a street market in Russia, until the government began enforcing tax requirements. (Tr. at 56.) In 2002 she traveled on a tourist visa to the U.A.E.-a popular resort destination for Russians-and worked at a water park. (Tr. at 57.) While living there, she met Applicant. Since then, she went back to Russia several times. Most recently, she returned to Russia in December 2005 to spend time with her family, especially her ailing father. (Tr. at 52.) She anticipated remaining in Russia for about two months. (*Id.*) She does not have any financial interests in Russia. (Tr. at 58.) She was approved for permanent residence status in the U.S. (Tr. at 14; Ex. C.)

Applicant's wife has a daughter who is 19 years old. (Tr. at 53.) His step-daughter has never been employed. (Tr. at 54.) She completed her first year of college in Russia. (Tr. at 53.) She came to the U.S. with her mother after the marriage to Applicant, applied for permanent resident status, and lived here for several months. (Tr. at 53; Ex. D at 2.) She did not adjust well to living in the U.S. (*Id.*) She returned to Russia to help care for the family; at the time of the hearing it was not known when she would return to the U.S., if at all. (Tr. at 53-54.)

According to Applicant, his wife's family was once wealthy. (Tr. at 46.) They sided with the White Army during the Bolshevik Revolution in 1917, and lost their property when the Red Army prevailed. (*Id.*) None of his wife's family members ever joined the Communist Party or any other political group.

Applicant's wife's parents are citizens and residents of Russia. (Ex. D at 2.) They own a modest apartment in a large city in Eastern Russia. (Tr. at 47.) Historically, the city has been safe from terrorist activity. (Tr. at 65.) Applicant met her parents, but he does not speak Russian and they do not speak English, so they have not shared a conversation. (Tr. at 48.) Her father is 80 years old. (Tr. at 48.) He was conscripted into the Russian Army during World War II to fight the Germans, and he served from 1943 to 1950. (Tr. at 47.) Thereafter he worked in a steel mill until he retired. (*Id.*) He suffered a stroke shortly before the hearing and was in poor health. (Tr. at 48.) Her mother was a bookkeeper in a restaurant until she retired. (Tr. at 47.) She enjoys relatively good health. (Tr. at 48.) Applicant's wife calls her mother on the telephone about weekly. (Tr. at 48, 54.) Applicant does not provide any financial assistance to his wife's parents. (Ex. D at 3.) They live on small government pensions, similar to social security payments.

Applicant's wife has one sister who is also a citizen and resident of Russia. (Tr. at 48.) She is an optometrist. (*Id.*) Applicant has never met or spoken to his wife's sister. (Tr. at 48.)

The Russian Federation emerged after the dissolution of the Soviet Union in 1991, and assumed the United Nations seat formerly held by the Soviet Union. (Ex. 3 at 4, 11.) The U.S. and Russia share common interests on a broad range of issues, including strategic arsenal reduction, the global war on terrorism, stopping the proliferation of nuclear weapons, bringing peace to the Middle East, and public health. (Ex. 3 at 12.) The U.S. government's strategy is to remain engaged with Russia during its transition to a democratic, free-market system and to establish lasting ties between Russians and Americans at all levels of society. (*Id.*) There has been some terrorist activity in Russia in recent years, largely arising from the conflict with the Chechen Separatist movement. (Ex. 4 at 27-28.) According to the State Department, "There is no current indication that American institutions or citizens are targets but there is a general risk of American citizens being victims of indiscriminate terrorist attacks." (Ex. 5 at 1; Ex. 6 at 5.) The U.S. State Department reports that Russia's human rights record remains uneven and has worsened in some areas in recent years. (Ex. 3 at 6.)

Applicant's personal assets are all in the U.S.; he has no financial assets outside this country. (Tr. at 59.) Applicant purchased a house in the U.S. jointly with his wife. (Ex. E.) He has properly reported all his foreign travel. (Ex. A.) At present, he has no plans to visit Russia in the future. (Tr. at 63.)

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988)). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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.)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions 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." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 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 pertinent 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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) 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 (App. Bd. Dec. 19, 2002)). "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.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A2.1.2.1 of the Directive provides that it may be disqualifying if "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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's wife is a citizen of Russia, although she is a permanent resident of the U.S. Also, Applicant's step-daughter is a citizen and resident of Russia. The evidence raises this potentially disqualifying condition.

Under ¶ E2.A2.1.2.2 of the Directive, it may be disqualifying where an applicant is "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." Applicant lives with his wife, whose parents and daughter are citizens and residents of Russia. The evidence raises this potentially disqualifying condition.

The Directive also sets out factors or conditions that could mitigate such security concerns. The Government produced substantial evidence establishing potentially disqualifying conditions, thus Applicant had the burden to produce evidence to rebut, explain, extenuate, or mitigate the concerns. (Directive, ¶ E3.1.15.) The government never has the burden of disproving a mitigating condition. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).)

Paragraph E2.A2.1.3.1 of the Directive provides that it is potentially mitigating where the "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 involved and the United States." Notwithstanding the facially disjunctive language, applicants must establish: (1) that the individuals in question are not "agents of a foreign power," and (2) that they are not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States. (ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004).)

In 50 U.S.C.A. § 438(6), the federal statute dealing with national security and access to classified information, the U.S. Congress adopted the definitions of the phrases "foreign power" and "agent of a foreign power" from 50 U.S.C.A. § 1801(a) and (b). In 50 U.S.C. § 1801(b), the phrase "agent of a foreign power" is defined to include anyone who acts as an officer or employee of a foreign power in the United States, engages in international terrorism, or engages in clandestine intelligence activities in the U.S. contrary to the interests of the U.S. or involving a violation of the criminal statutes of the United States. None of Applicant's relatives meet the definition of "agent of a foreign power" under 50 U.S.C.A. § 438(6) and 50 U.S.C.A. § 1801(b).

The Appeal Board, however, has adopted a broader definition of the phrase "agent of a foreign power." In ISCR Case No. 03-10954 at 4 (App. Bd. Mar. 8, 2006), the Appeal Board refused to apply the definition of "agent of a foreign power" found in 50 U.S.C. § 1801, apparently on the mistaken belief that the definition applied only to the Foreign Intelligence Surveillance Act. The Appeal Board has held that, "An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of Foreign Influence Mitigating Condition 1." (ISCR Case No. 02-24254, 2004 WL 2152747 (App. Bd. Jun. 29, 2004); *see also* ISCR Case No. 03-04090 at 5 (App. Bd. Mar. 3, 2005) (employee of the Israeli government is an agent of a foreign power); ISCR Case No.02-29143 at 3 (App. Bd. Jan. 12, 2005) (a member of a foreign military is an agent of a foreign power); and ISCR Case No. 02-2454 at 4-5 (App. Bd. June 29, 2004) (applies to an employee of a city government).) Even applying this broader definition, Applicant's wife's relatives in Russia are not "agents of a foreign power."

The second prong of the test is whether the relatives in question are "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." The federal statute, 50 U.S.C.A. § 1801(a), defines "foreign power" to include: a foreign government; a faction of a foreign nation; an entity openly acknowledged by a foreign government to be controlled by that foreign government; a group engaged in international terrorism; a foreign-based political organization; or an entity directed and controlled by a foreign government. The Appeal Board also construes the term "foreign power" broadly.

In assessing whether an applicant is vulnerable to exploitation through relatives or associates in a foreign country, it is necessary to consider all relevant factors. As noted above, ¶¶ E2.2.1, E2.2.2, and E2.2.3 of the Directive specifically require each administrative judge to consider all the facts and circumstances, including the "whole person" concept, when evaluating each individual case. To ignore such evidence would establish a virtual *per se* rule against granting clearances to any person with ties to persons in a foreign country, contrary to the clear terms of the Directive.

An important factor for consideration is the character of any foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. The Appeal Board has specifically held that it is error for an administrative judge to fail to consider a hostile relationship between the U.S. and a foreign country. (ISCR Case No. 02-13595 at 4 (App. Bd. May 10, 2005).) The Appeal Board has held that "a country's poor human rights record and its differences with the United States on important security issues such as terrorism are factors" that a judge must consider. (ISCR Case No. 04-05317 at 5 (App. Bd. June 3, 2005); *see also* ISCR Case No. 03-24933 at 7 (App. Bd. July 28, 2005).) This factor is not determinative; it is merely one of many factors which must be considered.

Of course, nothing in Guideline B suggests it is limited to countries that are hostile to the United States. (*See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).) The Appeal Board repeatedly warns against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B." (ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002)). It is well understood that "[t]he United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." (ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).) Distinctions between friendly and unfriendly governments must be made with extreme caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Moreover, even friendly nations can

have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, friendly nations have engaged in espionage against the United States, especially in economic, scientific, military, and technical fields. (ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).)

Nevertheless, the relationship between a foreign government and the U.S. may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to against the U.S. through the applicant. The nature of the foreign government might also relate to the question of whether the foreign government or an entity it controls would risk jeopardizing its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray this country. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

The relationship between the U.S. and Russia has improved dramatically in recent years. The U.S. and Russia share common interests on a broad range of issues. As noted above, the U.S. State Department describes our government's strategy as helping Russia during its transition to a democratic, free-market system by remaining engaged and establishing lasting ties between Russians and Americans at all levels of society. While Russia has been criticized about its human rights record, most concerns have stemmed from Russia's handling of the Chechen Separatist movement.

While not determinative, these circumstances suggest it is less likely that the Russian government would attempt to exploit its residents or citizens to act adversely to the interests of the United States.

Another factor which must be considered is Applicant's relatives' vulnerability to exploitation by foreign powers in Russia. Applicant's wife is a permanent resident of the U.S.; the fact that she lives in the U.S. principally and has the right to remain here greatly reduces her vulnerability to improper influence. Her parents and daughter reside in Russia; their physical presence in that country raises some potential vulnerability to governmental control. Additionally, her parents are now retired and live on a modest government pension, thus they are subject to possible governmental influence through that dependence. While there has been some terrorist activity in Russia in recent years arising from the conflict with the Chechen Separatist movement, there is no current indication that American institutions or citizens are targets. Nothing about potential terrorist threat in Russia raises the specific security concern addressed in ¶ E2.A2.1.3.1 of the Directive. Weighing all these factors, including the possibility of exploitation and the likelihood that a foreign power in Russia would attempt such influence, I conclude the evidence raises this potentially mitigating condition.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant's step-daughter lived with him for several months before she returned to Russia; the evidence does not rebut the inference that his relationship with his step-daughter is not casual. On the other hand, Applicant met his wife's parents on few occasions, and is unable to talk with them because of the language differences. I conclude this potentially mitigating condition applies, in part.

Paragraph E2.A2.1.3.5 of the Directive states that it may be mitigating where "[f]oreign financial interests are minimal

and not sufficient to affect the individual's security responsibilities." Applicant's wife has no property or financial interests in Russia. This potentially mitigating condition is raised by the evidence.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a mature individual with strong ties to this country. His family has strong and lasting ties to the U.S. military. All of Applicant's financial assets are in the U.S. On the other hand, Applicant's wife is a Russian citizen, and she has close ties to her immediate family members still living in Russia. The improving relationship between the U.S. and Russia makes it less likely, though not impossible, that Russia would attempt to exploit a citizen or resident in a manner that would make Applicant act adversely to the interests of the U.S. In any event, Applicant's family history and personal reliability make me confident that his marriage to a Russian citizen does not raise security concerns. I conclude Applicant has mitigated the potential security concerns arising from his wife's personal ties to relatives in Russia.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a-1.d: For Applicant

DECISION

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

Michael J. Breslin
Administrative Judge