

DATE: July 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-04337

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's family ties to Russia pose an unacceptable security concern of foreign influence under Guideline B. Clearance is denied.

**STATEMENT OF THE CASE**

On September 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information. (1) On October 1, 2005, Applicant answered the SOR (Answer). He admitted ¶¶ 1.d., 1.f., 1.g., in part, and 1.h., and denied ¶¶ 1.a., 1.b., 1.c., and 1.e. allegations, and requested a clearance decision based on the written record without a hearing.

On November 17, 2005, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on November 23, 2005. He acknowledged receipt of the FORM on December 7, 2005, and on January 14, 2006, submitted additional information for consideration to information contained in the FORM within the 30-day period provided to him. On February 17, 2006, the case was assigned to me.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein as findings of fact. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is a 51-year-old married man. Applicant was born in Kazakhstan and his wife was born in Russia. They were married in Moscow, Russia, in February 1975. They have two Russian born daughters, ages 29 (older daughter) and 21 (younger daughter). Applicant, his wife, and two daughters apparently immigrated to the U.S. around 1991. (2)

Applicant was granted a visa to enter the U.S. as a person of extraordinary ability. Upon Applicant's arrival in the U.S., he was employed in the academic community for several years, and then shifted to the private sector in the mid-1990s. Since January 2003, Applicant has worked for his current employer, a defense contractor, as a senior software engineer. He is a first-time applicant for a security clearance.

Applicant holds a Ph.D. in physics and mathematics. When he left Russia, he was a department head at a prestigious institute in Russia doing work related to computer simulation of physical processes in the Earth's atmosphere, such as whistler waves propagation in the atmosphere. He worked at that institute from approximately 1978 to 1995. He has published approximately 30 papers in international scientific journals. Applicant described his working conditions in that institute as "quite liberal," and added there was no requirement to be a member of the Communist Party, and that he was not a member of the Communist Party. He attributes his time at the institute as providing him with the opportunity "to develop [his] knowledge and become a valuable scientist."

In September 2002, Applicant became a naturalized U.S. citizen and received his U.S. passport in May 2003. In August 2004, his wife became a naturalized U.S. citizen, in May 2005, his older daughter became a naturalized U.S. citizen, and in November 2004, his younger daughter became a naturalized U.S. citizen.

When the SOR was issued, Applicant's older daughter was attending a university in Russia studying for her Ph.D. in medical sciences. In the process of earning her Ph.D. in Russia, she was required to spend time in Russia, and traveled back and forth to the U.S. In November 2005, Applicant's older daughter was awarded her Ph.D., and in December 2005, she returned to the U.S. Applicant indicated his daughter pursued her Ph.D. in Russia "because it is not very expensive compared to the United States and her mother who was a nurse had a good relationship with the school." The FORM did not offer any cost comparisons for Applicant's daughter to attend a U.S. state school versus the cost of sending her to Russia to pursue her Ph.D. Applicant's two daughter's reside with him and his wife in the U.S.

Applicant's only immediate resident citizen family member in Russia is a 43-year-old married sister. Initially, Applicant indicated his sister was employed as a "wholesale manager in commerce." He later added that his sister works as a "low level clerk in a small commerce company" and further added that the Russian government does not have a legitimate way of influencing such small companies in today's political climate. Applicant's brother-in-law has "stable and reasonably paid work in small commerce." Applicant's sister and brother-in-law have one daughter, who is attending a university in Russia. The FORM provides no information regarding the nature, quality, frequency, and method of Applicant's contact, if any, with his sister.

The SOR alleged Applicant owned land in Russia, given to him by the Russian government, and also that he was a former part owner of some apartments in Russia that he had sold to his wife and daughter. Applicant initially indicated a Russian village mayor had given him land for "small money." In October 2005, he sold the Russian land along with the existing building to his older daughter for approximately \$2,000.00. In December 2003, Applicant transferred the interest he held in his Russian apartment to his wife. The Russian apartment was owned by Applicant, his wife, and his mother-in-law. He explained the reason he sold the real property to his daughter was to alleviate security concerns over his owning land in Russia, and by selling the land to his daughter, he was able to circumvent the cost and length of time associated with trying to sell the land to a Russian buyer while living in the U.S.

Concerning the apartment, he explained Russian law precludes him from selling his partial interest to anyone other than those who are partial owners. Applicant asserts that the value of the land and apartment owned by his wife and daughter in Russia is approximately \$60,000.00 in contrast to his U.S. holdings, which consist of \$600,000.00 in equity in his U.S. house and \$200,000.00 in cash reserves.

Since Applicant moved to the U.S., he has returned to Russia at least three times. In July 1998, he returned to help his older daughter set up her residence. In July/August 2000, he returned to resolve issues concerning the property he owned. In July 2003, he returned to make arrangements to sell/transfer his land and apartment in Russia.

Applicant stated he has never been involved with any individual, group, organization, and/or affiliation that advocates the unlawful overthrow of the U.S. government. He asserts he and his family are completely loyal to the U.S. and supportive of the general policy goals of the U.S. He has no business contacts with anyone in any foreign country, nor does he have any contact with anyone connected with a foreign country. He added there is nothing in his background or

his family's background that would make him or his family vulnerable to duress. He has not been contacted by or received any requests or threats from anyone with a foreign country, and if he did, he would immediately report such contact to proper authority.

Applicant submitted a work performance evaluation covering the period of January 2003 to December 2003, with an summary assessment reflecting "outstanding" performance.

Russia has emerged as the largest successor state following the dissolution of the Soviet Union in 1991. Although tremendous changes have taken place within Russia since the dissolution of the Soviet Union, Russia has many attributes of an authoritarian government. The government submitted extensive materials regarding Russia, which I considered, and are included in the FORM (Items 6 through 11).

### **POLICIES**

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the granting or denial of access to classified information. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, <sup>(3)</sup> and the whole person concept. <sup>(4)</sup> Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence) is the applicable relevant adjudicative guideline.

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information. <sup>(5)</sup> The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence <sup>(6)</sup> a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. <sup>(7)</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. <sup>(8)</sup>

### **CONCLUSIONS**

Under Guideline B (Foreign Influence), a security concern exists when an individual's immediate family and 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 create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries are also relevant if they make an individual potentially vulnerable to coercion, exploitation, or pressure. In addition, common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

In every security clearance case an applicant's ties or connections to any foreign country require careful examination. <sup>(9)</sup> Notwithstanding, the mere possession of family ties with persons in a foreign country is not, as a matter of law, disqualifying. The language of the foreign influence guideline does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country. <sup>(10)</sup> 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 or risk. <sup>(11)</sup>

The government established a prima facie case under Guideline B by showing that Applicant has ties of affection or obligation with his sister and her family, who are resident citizens of Russia. <sup>(12)</sup> Unfortunately, there is nothing in the record that discusses the nature and quality of that relationship. The bond between most siblings is sufficient enough to warrant concern. To add further confusion, Applicant initially described his sister as a "wholesale manager in commerce, and later described her as a "low level clerk in a small commerce company."

The government further established the presence of foreign influence as a result of Applicant's real estate holdings in Russia. When the SOR was issued, Applicant owned real property in Russia, and also owned an interest in an apartment in Russia. He submitted evidence that he sold his interest in his real property to his older daughter in October 2005, and transferred the interest in his apartment to his wife in December 2003. He retained interest in these properties from the time he arrived in the U.S. until owning them became a security issue. Transferring them to an immediate family member, i.e. oldest daughter and wife, both of whom live in his home, on the heels of the security clearance process, is hardly viewed as divestiture of his Russian real estate holdings and eliminating the potential for coercion. His past employment and significant connection with a prestigious Russian institute and his travels to Russia raise further concerns that have not been adequately addressed.

It is noted that Applicant's wife, and two daughters have become U.S. citizens since the SOR was issued. Additionally, Applicant's older daughter has completed her Ph.D. in Russia, has returned to the U.S., and resides with Applicant. Accordingly, the concerns alleged in ¶¶ 1.a. through 1.c. are considered mitigated.

The ultimate burden to prove security clearance eligibility rests with the Applicant. An administrative judge cannot speculate on matters of this nature. Absent proof to the contrary, the fact that Applicant has close ties of affection to persons who are either citizens or residents of Russia is sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure by a foreign country. <sup>(13)</sup> Applicant's recent ownership of Russian property interests that are now retained by his wife and oldest daughter, both living in his household, create the potential for coercion. Foreign Influence Disqualifying Condition (DC) 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;* and DC 6: *Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;* apply.

In deciding whether Applicant's family members are in a position to be exploited, I considered Russia's form of government. <sup>(14)</sup> Although Russia has made great strides since the dissolution of the Soviet Union in 1991, Russia is a country ruled by an authoritarian government. The U.S. and Russia seem to have a friendly, cooperative relationship as demonstrated by their diplomatic status, the foreign assistance provided to Russia, and their mutual interests in combating terrorism. As such, the security concerns raised by Russia are less than those raised by a country hostile to the U.S. Nevertheless, the concerns still exist, because even friendly countries have interests that are contrary to the national interest of the U.S.

It was the Applicant's responsibility to refute, explain, extenuate, or mitigate the foreign influence concerns raised by his family ties. The existing minimal record leaves much to be desired in the form of evidence as to whether any of Applicant's Russian family members are agents of a foreign power <sup>(15)</sup> or employed by or connected to a foreign government or in positions where they are likely to be exploited by a foreign power. The lack of information concerning Applicant's relatives, and his failure to demonstrate that his family members are not in a position to be exploited, by either coercive or non-coercive means, by a foreign government in a way that could force him to choose between loyalty to those relatives and loyalty to the U.S., precludes a finding that any of the Guideline B mitigating conditions apply. <sup>(16)</sup> The same holds true for his recent Russian real estate holdings, employment with a Russian institute, and visits to Russia.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. Considering all relevant and material facts and circumstances present in

this case, including Applicant's statement, his family ties to foreign nationals, the whole person concept, and the adjudicative factors listed in the Directive, I find Applicant has not mitigated the security concerns.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B) AGAINST APPLICANT

Subparagraph 1.a - 1.c.: For Applicant

Subparagraph 1.d. - 1.h.: Against Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. Required by 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) (Directive), as amended.
2. Applicant's limited personal information was obtained from documents contained in the FORM. Applicant submitted a resume indicating he accepted an academic appointment as a visiting researcher beginning in February 2001 at a U.S. university. This date conflicts with the dates of his employment at the Russian institute (1978-1995).
3. Directive, Section 6.3. Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate: the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.
4. Directive, E2.2.1. ". . . 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. . . ."
5. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2 (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199 (April 3, 2006) p. 3 (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.
7. *Id.* at 528, 531.
8. *See Egan*; Directive E2.2.2.
9. ISCR Case No. 97-0699 (November 24, 1998) at p. 3 (Nothing in Guidelines B or C "requires that the foreign country in question have interests that are inimical to the interests of the United States.").
10. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

11. *Id.*

12. ISCR Case No. 03-04343 (December 20, 2005) at p. 4 (There is a rebuttable presumption that contacts with immediate family members are not casual.).

13. ISCR Case No. 99-0511 (December 19, 2000) at pp. 10-11 (foreign influence issues are not limited to situations involving coercive means of influence; rather, they can include situations where an applicant may be vulnerable to non-coercive means of influence).

14. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the U.S.

15. *See* ISCR Case No. 03-10954 (March 8, 2006) at p. 4 (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 Mitigation Condition 1.)

16. ISCR Case No. 02-04455 (March 7, 2006) at p.2 (The issues is not merely whether Applicant's father can influence him, but whether Applicant has presented evidence showing his father is not in a position to be exploited by a foreign power in a coercive or noncoercive manner.).