

DATE: December 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-17714

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate Guideline B security concerns related to his fiancée and his eleven-year-old daughter, both of whom are citizens and residents of the Russian Federation. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 16, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing September 9, 2006, and elected to have a hearing before an administrative judge. On October 5, 2006, the case was assigned to me. The parties agreed to a hearing date of November 17, 2006, and a hearing was convened on that date 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 called no witnesses, submitted one exhibit for identification and admission into evidence, and offered five official U.S. documents containing facts for administrative notice. Applicant did not object to the admission of the Government's exhibit, which was identified as Ex. 1, and it was admitted into evidence. Applicant did not object to the factual documents, identified as Government Documents for Administrative Notice I through V, and they were admitted to the record. Applicant appeared as a witness on his own behalf and called four additional witnesses. He introduced four exhibits, which were identified as Applicant's Ex. A through D, and admitted to the record without objection. On December 5, 2006, DOHA received the transcript (Tr.) of the proceedings.

RULING ON PROCEDURE

At the conclusion of the evidence, Department Counsel moved to amend the SOR to conform with the evidence adduced at the hearing. *See* ¶ E3.1.17 of Enclosure 3 of the Directive. Without objection, allegation 1.c. of the SOR was amended to read: "At last report, your fiancée's father had a Soviet passport indicating Georgian nationality, and he may be in

Georgia." Without objection, allegation 1.d. of the SOR was amended to read as follows: " Your fiancee's brother is a citizen and resident of Russia." Without objection, allegation 1.f. of the SOR was amended to read: "You traveled to Russia in at least 1994, 1995, 1996, 1998, and 1999."

FINDINGS OF FACT

The SOR contains six allegations of disqualifying conduct charged under Guideline B, Foreign Influence. In his answer to the SOR, Applicant admitted four allegations and denied two allegations. After the SOR was amended to conform to the evidence adduced at the hearing, Applicant admitted all six allegations. His admissions are incorporated as findings of fact.

Applicant is a senior military analyst employed by a defense contractor. He and his colleagues consider his work to be important to the national security. (Tr. 156; Exs. B, C, and D.) He earns approximately \$140,000 a year. He was born in 1962 and is currently 44 years old. From 1979 to 1990, Applicant worked, attended college part-time, and cared for his ailing parents. In 1990, he received a Bachelor of Arts degree in history. (Ex. 1, Tr. 36, 137.)

In 1989, while still a university student, Applicant met a young girl, who was approximately 16 years old. The girl, a citizen and resident of Russia, was studying briefly in the U.S. as an exchange student. Applicant and the young girl became friends but did not have a romantic relationship. She returned to Russia. (Tr. 111, 125.)

In 1991, Applicant accepted a diplomatic position with the U.S. government, and he continued to hold that position until January 1994. In 1992, he became engaged to a U.S. citizen, who was killed in an automobile accident that same year. Throughout his three years of employment in the diplomatic position, Applicant corresponded every few months with the Russian girl and reported his correspondence to his superiors. In January 1994, Applicant made an arrangement to meet the Russian girl, who was living in a city on the northern side of the Caucasus Mountains next to Georgia. He resigned his diplomatic job, traveled to Russia and met the girl, who was now approximately 21 years old, in Moscow. He visited the girl for a about a week, and the couple became engaged. Applicant came back to the U.S. and planned to obtain a fiancée visa so she could come to the U.S. He returned to Moscow in February 1995, where he spent about two days with his fiancée. During that visit, a child was conceived. Applicant's daughter was born in November 1995. Applicant's daughter is a citizen and resident of Russia. (Tr. 92, 108, 112, 120-122, 125-128.)

In 1996, Applicant traveled to visit his fiancée and their daughter in her home city in the Caucasus. The fiancée's father, an ethnic Georgian, knew Applicant was a U.S. citizen and did not approve of Applicant's relationship with his daughter. The father told his daughter and Applicant he wanted nothing to do with them, and he threatened to kill them if they ever came to his house again. Applicant returned to the U.S. after visiting his fiancée and child for about a week. Not long afterwards, the fiancée's family split up, and the fiancée's parents divorced. The father, who held a Soviet passport indicating Georgian nationality, left the family and perhaps went to Georgia. Applicant's fiancée and child, along with her mother and grandmother, went to join her brother, who had found work as an import-export factor at a port city in the Russian Far East. (3) Applicant visited his fiancée and child in the Russian Far East in 1998 and 1999. He has not seen them since the 1999 visit. (Tr. 96, 122-123, 130.)

Applicant gave about \$10,000 to his fiancée so she could establish a cosmetic business and be self-supporting. In 2004, the fiancée obtained a Russian Federation passport that would enable her to come to the U.S. For the past two years, Applicant has unsuccessfully sought a Russian visa so he can travel to Russia, marry his fiancée, and bring her and their daughter to the U.S. (Tr. 89, 97, 100, 131.)

Applicant's fiancée and daughter live in a city in the Russian Far East about 150 miles from the city where the fiancée's brother lives. The fiancée's grandmother, a citizen of Russia and a pensioner, also lives in the Russian Far East in an area relatively close to the brother. The fiancée's mother remarried and moved to Finland. Applicant's daughter is now eleven years old and attends a special school for gifted and talented children. Applicant wires his fiancée approximately \$2,500 a month for her support and the support and education of their daughter. He also sends approximately \$200 per month for the support of his fiancée's grandmother. (Tr. 130-137.)

Applicant speaks on the telephone about every day with his fiancée, who has a cell phone. He also communicates with

her by e-mail The fiancée speaks with her brother by telephone about once a week. She has less frequent telephone contact with her grandmother. Applicant has apprised his managers and co-workers of his domestic situation. It is not clear when he will be granted a visa to travel to see his fiancée and daughter. (Tr. 40, 56, 73-74, 133-135.)

Applicant presented four character witnesses and offered seven letters from co-workers and managers attesting to his strong work ethic, technical expertise, and professionalism. (Ex. B though D.)

I take administrative notice of political and economic instability in the Russian Federation, conditions which raise security concerns for U.S. citizens visiting or residing there, and, by extension, for those U.S. citizens who have family members residing in the Russian Federation. Tensions exist between the Russian military and the civilian government over resource allocation, restructuring, and reform. (Government Documents for Administrative Notice II, III.) The Russian Federation has a sophisticated intelligence capacity inherited from the former Soviet Union and continues to target U.S. military interests. Russian intelligence agents seek opportunities to penetrate U.S. intelligence and to acquire specific information on U.S. military capabilities. They also use the Internet and Internet service providers to acquire and exploit critical information posted by U.S. businesses that can be used to their economic or military advantage. (Government Document for Administrative Notice I.)

I also take administrative notice that Georgia has been a democratic republic since October 1995. Conflict in neighboring Chechnya and Abkhazia has resulted in an influx of approximately 300,000 internally displaced persons who were driven from their homes. Georgia's unstable political situation and culture of official governmental corruption have hampered domestic and foreign investment and kept its economic activity below potential. (Government Document for Administrative Notice IV.)

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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline B - Foreign Influence

In the amended SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's fiancée is a citizen and resident of Russia (¶ 1.a.); that Applicant's daughter is a citizen and resident of Russia (¶ 1.b.); that, at last report, the fiancée's father had a Soviet passport indicating Georgian nationality and may be in Georgia (¶ 1.c.); that the fiancée's brother is a citizen and resident of Russia (¶ 1.d.); that the fiancée's grandmother is a citizen and resident of Russia (¶ 1.e.); and that Applicant traveled to Russia in at least 1994, 1995, 1996, 1998, and 1999 (¶ 1.f.).

A Guideline B security concern exists when an applicant's immediate family, including cohabitants, and other persons to whom he might be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents in that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and emotional commitments and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the Russian Federation is politically and economically unstable, conditions that have been exploited by criminal and terrorist groups. Additionally, Russian intelligence agents seek to acquire specific information on U.S. military capabilities. Their actions threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of the Russian Federation could be vulnerable to coercion, exploitation, or pressure.

Additionally, while the U.S. and Georgia have friendly relations, Georgia has internal problems with corruption, refugees, and an under-developed economy--issues that could give rise to exploitation or pressure. Applicant's fiancée's father has Georgian nationality and may be in Georgia. Applicant's fiancée has had no contact with her father for approximately 10 years and does not know where he is. She and Applicant's daughter now live in the Russian Far East, thousands of miles from where her father might be residing. Since Applicant's fiancée no longer has a relationship with her father, and since the father has no independent relationship with Applicant, who is not married to his daughter, the father of the fiancée does not appear to raise a security concern. Applicant provided information at the hearing to rebut the SOR allegation that his fiancée's father raised a Guideline B security concern.

However, Applicant's other admissions raise several possible Guideline B security concerns. Applicant's fiancée and his daughter are citizens and residents of the Russian Federation. The citizenship and residency of these immediate family members raise security concerns under E2.A2.1.2.1. of Guideline B. Applicant's on-going support of and familial relationship with his fiancée, his daughter, and the daughter's great-grandmother raise security concerns under E2.A2.1.2.6. and E2.A2.1.2.8. and suggest he could be vulnerable to coercion, pressure or exploitation, and foreign influence.

An applicant may mitigate foreign influence security concerns by demonstrating that immediate family members, cohabitants, or associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. Mitigating Condition (MC) E2.A2.1.3.1.

Foreign connections derived from a marriage-like relationship and not from birth can raise Guideline B security concerns. In reviewing the scope of MC E2.A2.1.3.1., DOHA's Appeal Board has stated that the term "associate(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760, at 4 (App. Bd. Feb. 18, 2005) While the evidence does not establish that Applicant's fiancée and daughter are agents of a foreign power, they are citizens of the Russian Federation, as is the fiancée's brother, with whom the fiancée has frequent contact. Additionally, the fiancée's grandmother, who is supported in part by Applicant, is a citizen and resident of the Russian Federation. The fiancée's contacts and relationships with the brother and grandmother raise security concerns.

The Russian Federation, a country with an uncertain political and economic future, possesses a sophisticated intelligence service inherited from the former Soviet Union. That intelligence service actively seeks classified information on U.S. military capabilities. Applicant offered no evidence to rebut the Government's assertion that his fiancée and daughter

could be exploited by individuals in the Russian Federation in a way that could force him to choose between loyalty to his fiancée and child and the security interests of the United States. ISCR Case No. 03-15485, at 4-6 (App. Bd. Jun. 2, 2005)

Additionally, Applicant traveled in 1994 and 1995 to visit his fiancée in the Russian Federation. After his daughter was born, he traveled in 1996, 1998, and 1999 to visit his fiancée and his daughter. He hopes to be able to travel to the Russian Federation again to marry his fiancée and bring her and the child to the U.S.

Applicant provided his fiancée with \$10,000 to establish a cosmetics business the city in the Russian Far East where she lives. He sends his fiancée \$2,500 each month for her support and the support and education of their daughter. Applicant also sends his fiancée's grandmother \$200 each month for her support. Applicant's travel to the Russian Federation, his investment activity, and his support of his fiancée, daughter, and the fiancée's grandmother raise security concerns under DC E2.A2.1.2.6. and E2.A2.1.2.8. He was unable to rebut the assertion that this conduct, which was not the result of official U.S. government business, could make him vulnerable to foreign influence or pressure and affect his security responsibilities. Accordingly, MC E2.A2.1.3.2. and E2.A5.1.3.5. do not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. MC E2.A2.1.3.3. Applicant speaks with his fiancée by telephone almost daily. While his contacts with his fiancée's brother and grandmother appear to be infrequent, his relationship with his fiancée and their daughter is neither casual nor infrequent. Additionally, he supports his fiancée's grandmother, which suggests a relationship that is not casual. Accordingly, MC E2.A2.1.3.3. is inapplicable.

Whole Person Analysis

Paragraph E2.2 of the Directive requires that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct (E2.2.1.1); the circumstances surrounding the conduct, to include knowledgeable participation (E2.2.1.2); the frequency and recency of the conduct (E2.2.1.3); the individual's age and maturity at the time of the conduct (E2.2.1.4.); the voluntariness of participation (E2.2.1.5.); the presence or absence of rehabilitation and other pertinent behavioral changes (E2.2.1.6); the motivation for the conduct (E2.2.1.7); the potential for pressure, coercion, exploitation, or duress (E2.2.1.8.); and, the likelihood for continuation or recurrence (E2.2.1.9).

The record reflects that Applicant, a military analyst for a government contractor, is highly respected by his colleagues for his expertise and ability. He remains loyal to his relationship with his fiancée and their daughter, whom he has not seen since 1999. Of particular concern in this case, however, is the potential for Applicant to be subject to pressure, coercion, exploitation, or duress as a result of the citizenship of his fiancée and daughter, and the citizenship of the fiancée's brother and grandmother, who, in these circumstances, function as in-laws. Additionally, Applicant's monthly monetary support of his fiancée, their daughter, and the fiancée's grandmother, and his investment of \$10,000 to set up the fiancée in business in the Russian Far East are highly visible activities that could be exploited to pressure or coerce Applicant and heighten the risk for the protection of classified information.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal American citizen. However, he failed to rebut or mitigate the security concerns alleged in subparagraphs 1.a, 1.b., 1.d., 1.e., and 1.f. of the SOR and demonstrate he would not be vulnerable to foreign influence that could result in the compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in this proceeding. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

I have reviewed and considered all of the evidence, and I have assessed Applicant's credibility and demeanor. After weighing the applicable Guideline B disqualifying and mitigating conditions, and after considering all relevant factors

in the whole person analysis, I conclude Guideline B allegation 1.c. for the Applicant and Guideline B allegations 1.a., 1.b., 1.d., 1.e., and 1.f. in the SOR against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

DECISION

In light of all of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant testified that the brother and his wife travel overseas frequently and have considerable business in the importation of goods from China. (Tr. 119-120.)