

DATE: December 28, 2007

In Re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-24517
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**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Based on an assessment of her as a whole person, Applicant mitigated security concerns over foreign influence as no “heightened risk” was established because of her ties to her parents who reside in Estonia, an ally of the U.S. While her mother was born in Russia, she left as a child; her father was granted citizenship in Estonia. Applicant is fully integrated into U.S. society with a husband she married in 2001 and their child who are both U.S. citizens. She became a naturalized U.S. citizen in November 2005; her travels to Estonia are to visit her parents. It is improbable that foreign pressure on her relatives could create a situation that could result in the compromise of classified information. Also, Applicant’s property in Estonia is unlikely to result in conflict as her financial interests in the U.S. are substantially higher. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)

to the Applicant on January 30, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant eligibility to Applicant that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Foreign Influence (Guideline B) in paragraph 1 and over Outside Activities (Guideline L) in paragraph 2. The SOR was based on the revised (“new”) Adjudicative Guidelines (AG)² issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant replied to the SOR allegations in an Answer notarized on February 21, 2007, and requested a hearing. She admitted the allegations in paragraph 1 and denied the allegation in paragraph 2.

On June 12, 2007, Department Counsel noted the case was ready to proceed; however, he also filed a memo on June 18, 2007, that he had attempted to coordinate the hearing date with Applicant without success; so he asked the judge to set the hearing date without her concurrence. The matter was assigned to another judge on June 14, 2007. Subsequently, a Notice of Hearing, issued on June 28, 2007, set the matter for July 16, 2007, at a location near where Applicant works and lives. On July 13, 2007, Applicant stated she could not appear on July 17, 2007, and consequently could not pursue her case. On July 17, 2007, another judge handled the procedural issues at the scheduled hearing. (TR I) Later, he documented that he questioned Applicant by telephone as to why she had not appeared for the hearing. She explained she was leaving the country with her husband and child and had previously advised the assigned Department Counsel she could not appear that date. She requested the case be handled as a File of Relevant Material (FORM). Department Counsel objected to a FORM; instead he requested a default or that the hearing be re-scheduled.

Subsequently, a DOHA management decision was made to re-schedule her hearing and assign a new judge and new counsel. The case was re-assigned to me on July 20, 2007, for hearing. Because Applicant was out of the country, the case could not be scheduled until August 28, 2007 when a notice was issued setting the case for October 2, 2007.

At the October hearing (TR II) the Government offered one exhibit (Exhibits 1) which was admitted into evidence without objection. Also, based on a memorandum requesting Administrative Notice of documents raising security concerns over both Russia and Estonia, I also admitted fourteen documents for Administration Notice (AN) (Exhibits I-XIV). Applicant testified, but submitted no exhibits. The transcript (TR II) was received on October 11, 2007.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

² Applicant did receive a copy of the DoD Directive 5220.6 which was sent with her Statement of Reasons (SOR).

consideration of that evidence, I make the following additional Findings of Fact:

A professional linguist, Applicant is a 31-year-old employee of a defense contractor (Employer #1) in State #1 where she has worked as a freelance translator since January 2003. She also worked for Employer #1 from December 2001 to January 2002 as a project manager. In order to do classified work, she needs a security clearance. In January 2006 she completed a Security Clearance Application (Standard Form 86). Applicant also works full time as an executive assistant for an association that works with the U.S. Department of State to administer programs for overseas students. (Employer #2). (Exhibit 1; TR II 15, 19-21, 29-34)

Applicant has a certificate in Teaching English as a Second Language (TESL) and a Master of Arts degree from a U.S. university awarded in May 2005. She is also certified as an "Oral Proficiency Tester" by the American Council on the Teaching of Foreign Languages. (Answer) She speaks four languages: English, Estonian, Russian, and German. She develops tests utilizing her knowledge of these four languages. (TR II 16, 19, 29)

Born in Estonia, she received a degree from a university in Estonia and worked at a university in Estonia as a teacher of English from June 1999 to January 2001. Applicant entered the U.S. in February 2001 to marry a U.S. citizen in March 2001. Applicant has a child who was born in 2007 in the U.S.; she is currently on maternity leave from Employer #2. (TR II 35, 64)

Applicant became a naturalized U.S. citizen in November 2005. At that point she was no longer a citizen of Estonia as that country does not recognize dual citizenship. She gave up her Estonian passport and now uses a U.S. passport issued in January 2006. She has no affiliation with any political or governmental organizations in Estonia or Russia. (Exhibit 1; TR II 16, 19-20, 24-28) She has never lived in nor visited Russia though her parents were born there. (Exhibit 1; TR II 23)

Foreign Influence and Outside Activities

Her mother and father live in Estonia, and Applicant talks to them weekly on the telephone. She is an only child. (TR II 39, 44-45) Her mother who is 62 was born in Russia and is a citizen of Russia; however, she moved to Estonia when she was a child. Now retired, the mother was an economist who worked as an accountant for a government-owned factory producing radio equipment, LP players, and records. She has a pension from the Government of Estonia. However, she remains a citizen of Russia: when Estonia separated from Russian, residents had to pass an Estonian language³ examination to become a citizen, and she failed it. (Exhibit 1; Answer; TR II 16, 35-39)

Her father who is 72 was born in Russia and now is a citizen of Estonia. When he was 22, he moved to Estonia after he attended university in Russia. Her father was a soccer coach and later worked for construction companies. He became a citizen of Estonia without having to take the language test as he was awarded citizenship in Estonia for his past sports achievements. He receives benefits from the Estonian government. Both of her parents have been retired for ten years, but she

³ The Estonian language is one of the world's most difficult languages to learn as it has fourteen cases. During the Soviet era, the Russian language was imposed for official use. (AN X, page 3)

provides some financial support of \$100 per month. (Exhibit 1, Answer; TR II 16, 35-36, 39-44)

Applicant has three close friends in Estonia from her time at the university; they all teach at a university or high school in Estonia. She remains in touch with them, but she is no longer close to them. (TR II 46-51)

Her husband's parents and siblings are U.S. citizens. (Exhibit 1; TR II 45)

Applicant disclosed she has owned property in Estonia from January 1995 to present which is the apartment where she grew up. Her parents who live there transferred ownership to her. The value is approximately \$100,000. (Exhibit 1; Answer; TR II 51-52) She also owns a house in the U.S. with her husband; they purchased it for \$550,00. (TR II 53-54)

While she also has taught English to the staff of the Embassy of Uzbekistan from January 2003 to January 2007, she was not officially employed by the embassy. She did this teaching once a week as an extension of her work for Employer #2 as a favor for her boss who has dealt with the embassy to facilitate U.S. Department of State funded educational programs within that region. She did not receive any pay from the Embassy as she was teaching there as part of her duties to Employer #2. She has not done this work for any other embassy. (Answer; Exhibit 1; TR II 21, 55-60) When she returns to her job from maternity leave, she initially testified that she was not certain over whether or not to return to the work at the Embassy of Uzbekistan as it was not her primary duty. She later clarified that she is willing to stop that teaching if it poses a conflict with her having a U.S. security clearance. (TR II 64-68)

She has returned to Estonia to visit her parents and friends in December 2002, March 2004, April 2005 and in July 2007. She had no contact with any foreign government officials on these trips. She also visited Austria in September 2004 and disclosed other tourist trips and business trips to other countries.. (Exhibit 1; Answer; TR II 61-62)

**Is the foreign country known to target United States citizens
to obtain protected information?**

The Government provided for Administrative Notice several documents regarding Russia and Estonia. The documents included a State Department Background Note on Russia, a country report on human rights practices from 2006, a consular information sheet, a CRS Report for Congress, an annual report on foreign economic collection and industrial espionage, and an *Intelligence Threat Handbook* that included a section on Russia ("Threat Handbook"), a 2007 Defense Intelligence Agency (DIA) report on threats, 2005-2006 Country Reports on Terrorism, a State Department speech, a background note on Estonia, a consular information sheet on Estonia, a country human rights report on Estonia, and a State Department interview on Estonian-Russian Relations. (AN I to XIV)

The government conceded that Applicant's mother has not had contact with Russia since she was a child and that Estonia does not create much of a heightened risk from the U.S. perspective as it has favorable relations with the U.S. (TR II 73-74)

Even with respect to Russian, a Deputy Assistant Secretary for European and Eurasian Affairs

remarked in 2007 that the U.S. relationship with Russia “cannot be simplified to a sound bite. . . . They are complicated and multidimensional.” (AN IX, page 7)

Estonia is a stable democracy with a rapidly developing economy. (AN XI) Estonia is a parliamentary democracy with a constitution ratified in 1992. (AN X) The government generally respects human rights of citizens and the large ethnic Russian noncitizen community. (AN XII)

In May 2007 an Assistant Secretary of State for European and Eurasian Affairs commented on Estonian TV, “one of the things I find most encouraging about Estonia is how much of a success you have made with reform, with modernity, with your place in Europe, and how confident your nation is becoming as you make a success out of your freedom” (AN XIII)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence Guideline B

6. *The concern:* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as to whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The Government raised concerns over possible foreign influence because of Applicant's close ties of affection to Estonia as both her mother and father are residents of Estonia (the father is a citizen of Estonia and the mother is a citizen of Russia but has not lived there since she was a child). Also, Applicant owns an apartment (valued at \$100,000) in Estonia where she grew up and where her parents still live. Applicant traveled to Estonia in December 2002, March 2004, April 2005, and July 2007. Security concerns raised under Guideline B, Foreign Influence, require an assessment under disqualifying condition (DC) 7.(a.) of the security risk⁴ that may exist when an individual's family member "is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." The government conceded that the mother's childhood ties to Russia are remote and that the country of Estonia does not raise a "heightened risk." Given the fact that both her relatives are retired, they seem an unlikely target of the government of Estonia, with whom the U.S. has friendly relations. Under DC 7.(e.) Applicant disclosed she owns an apartment in Estonia; however, she and her husband have substantial assets in the U.S.

While I have considered these concerns, I conclude Applicant has presented evidence to meet the burden of mitigating⁵ those circumstances either under the mitigating conditions (MC) outlined

⁴ **7. Conditions that could raise a security concern and may be disqualifying include:**

- (a.) contact with a foreign family member, business or professional associate, friend, or a person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (e.) A substantial business, financial, or property interest in a foreign country. . . .which could subject the individual to heightened risk of foreign influence or exploitation.

⁵ **8. Conditions that could mitigate security concerns include:**

- (a.) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.
- (c.) contact and correspondence with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (e.) The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups or organizations from a foreign country;
- (f.) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate or pressure the individual.

in the revised guidelines or by a whole person analysis. While there are concerns over Russia's economic espionage and human rights record, I conclude the ties to Russia of the mother are so tangential that any risk would appear to be slight and clearly manageable under MC (a.). Applicant is a U.S. citizen who married here, was educated here, works here, and now has a child born in the U.S. Given Applicant's deep ties to the U.S., there is no evidence that she would have any motivation to assist Russia or Estonia if their interests were different from the U.S. Thus, I find there is no substantial likelihood that she would be subject to duress merely because of these family ties. While she traveled to Estonia, that travel alone does not raise a security concern. Since becoming a U.S. citizen, her trips were with her U.S. passport.

Her ownership of an apartment where her parents live is not a "substantial business, financial, or property interest in a foreign country. . . .which could subject the individual to heightened risk of foreign influence or exploitation." Applicant and her husband purchased a home in the U.S. worth more than five times the value of the Estonian property, so proportionately it does not raise a security concern. Consequently, in comparing the value of the property to their other assets, they fall within MC (f.) as the value of the foreign financial interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate or pressure the individual.

Also I have evaluated her under the whole person adjudicative process guidelines:

(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 the 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. (AG 2. Adjudication Process)

Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given her strong and lengthy ties to the U.S. since 2001 and since she became a U.S. naturalized citizen in 2005, there is limited potential for coercion, exploitation or duress with Estonia, an ally of the U.S., or Russia, as those ties are remote. After a review of all of the evidence, I conclude there is little potential for pressure, coercion, exploitation, or duress.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.e. in Applicant's favor.

Outside Activities

36. *The Concern.* Involvement in certain types of outside employment or activities

is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

Under Guideline L, conduct involving certain types of outside employment or activities raise a security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information. In this case Applicant was not employed by a foreign embassy though she had disclosed she taught English to the staff. She believed she was merely doing a favor for her supervisor in teaching English at a foreign embassy as she was not paid by the embassy for this work. Under disqualifying condition 37.(a)(1) security concerns are raised over either compensated or volunteer employment or service with the government of a foreign country. However, she fully disclosed this outside activity on her SF 86.

Under 38.(b) Applicant has now mitigated the concerns as she discontinued the activity upon being notified that it was in conflict with his or her security responsibilities. She has not had any contact with the embassy since January 2007 when she went on maternity leave. Now that she understands the conflict, she testified credibly that she is willing to terminate this relationship. At the time she was doing this teaching, she had no security clearance and was not advised of the conflict.

An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the conduct occurred. Based on Applicant's credible testimony and review of her as a whole person, I conclude that Guideline L in favor of Applicant.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 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
Subparagraph 1.e.:	For Applicant
 Paragraph 2. Guideline L	 FOR APPLICANT
Subparagraph 2.a.:	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 a security clearance to the Applicant.

Kathryn Moen Braeman
Administrative Judge