



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

-----  
SSN: -----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 06-25339

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel

For Applicant: *Pro se*

August 14, 2008

**Decision**

GALES, Robert Robinson, Chief Administrative Judge:

Applicant mitigated the security concerns regarding foreign preference and foreign influence. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On August 25, 2005, Applicant applied for a security clearance and submitted an e-QIP version of a Security Clearance Application (hereinafter SF 86). On August 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and

recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG apply to Applicant's case because her SOR was issued after September 1, 2006.

Applicant received the SOR on September 5, 2007. In a sworn, written statement, dated September 11, 2007, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on March 25, 2008, and the case was assigned to me the following day. A Notice of Hearing was issued on March 31, 2008, and I convened the hearing, as scheduled, on May 7, 2008.

During the hearing, three Government exhibits were received without objection. Applicant testified. The transcript of the hearing (Tr.) was received on May 15, 2008.

### **Rulings on Procedure**

At the commencement of the hearing, Department Counsel requested that I take Administrative Notice of certain enumerated facts pertaining to both the Ukraine and the Russian Federation (hereinafter Russia), appearing in two written submissions. Facts are proper for Administrative Notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding the Ukraine in publications of the Department of State;<sup>1</sup> a press release from the U.S. Department of State, U.S. Embassy in Ukraine;<sup>2</sup> and the Congressional Research Service.<sup>3</sup>

---

<sup>1</sup> U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Ukraine*, dated March 2008; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2007: Ukraine*, dated March 11, 2008; U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Ukraine*, dated February 15, 2008; and U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2006: Europe and Eurasia Overview*, dated April 30, 2007.

<sup>2</sup> U.S. Department of State, U.S. Embassy in Ukraine, Press Release: *U.S. Ambassador's Statement on Ukrainian Parliamentary Elections*, dated October 1, 2007.

<sup>3</sup> Congressional Research Service, Library of Congress, *Ukraine: Current Issues and U.S. Policy*, dated August 23, 2006.

The Government relied on source information regarding Russia in publications of the Department of State;<sup>4</sup> the Congressional Research Service;<sup>5</sup> the National Counterintelligence Center (now known as the Office of the National Counterintelligence Executive);<sup>6</sup> the Center for Counterintelligence and Security Studies;<sup>7</sup> and the Defense Intelligence Agency.<sup>8</sup>

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the Ukraine and Russia subsections.

### Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations in ¶¶ 1.a. through 1.c., and 2.a. through 2.d., of the SOR.

Applicant is a 58-year-old employee of a defense contractor, and she is seeking to obtain a security clearance, the level of which has not been specified. She has been employed as an optical engineer by the same government contractor since March 2005.<sup>9</sup>

Applicant was born in 1950<sup>10</sup> to ethnic Russian parents residing in the Ukraine.<sup>11</sup> After graduating from high school in 1967, she moved to Russia and entered a Russian university, eventually earning a Ph.D. in Physics in 1973.<sup>12</sup> In 1978, she received a Ph.D. in Non-Linear Optics from another Russian institute.<sup>13</sup> From 1978 until 1994, she was employed, first as an engineer with an institute, and then as a research scientist at

---

<sup>4</sup> U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Russia*, dated September 2007; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2007: Russia*, dated March 11, 2008; and U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Russia*, dated December 26, 2007.

<sup>5</sup> Congressional Research Service, Library of Congress, *Russian Political, Economic, and Security Issues and U.S. Interests*, dated May 31, 2007.

<sup>6</sup> National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005*, dated August 2006.

<sup>7</sup> Interagency OPSEC Support Staff, Center for Counterintelligence and Security Studies, *Intelligence Threat Handbook*, excerpts, dated October 6, 2006.

<sup>8</sup> Defense Intelligence Agency, Director's Statement for the Record, Senate Armed Services Committee, *Current and Projected National Security Threats to the United States*, dated February 27, 2007.

<sup>9</sup> Government Exhibit 1 (Security Clearance Application, dated Aug. 25, 2005), at 11.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Tr.* at 49.

<sup>12</sup> *Id.* at 33; Government Exhibit 2 (Statement of Subject, dated Apr. 26, 2007), at 1.

<sup>13</sup> *Id.* at 2.

a university laboratory.<sup>14</sup> The combination of perestroika and the eventual breakup of the Soviet Union diminished funding for research in all the scientific fields, and made it more difficult to make a living in those fields.<sup>15</sup> Accordingly, when her second husband, a research scientist, received an offer of employment from a U.S. university, he accepted it, and they emigrated from Russia to the U.S. in August 1994.<sup>16</sup> She subsequently earned a Masters Degree in Computer Science from a U.S. university.<sup>17</sup>

In 1972, while still a student at the Russian university, Applicant married her first husband, another student. They separated in 1977, and were divorced in 1982.<sup>18</sup> She has had no contact with him in over 20 years.<sup>19</sup> That same year, she and her current husband were married.<sup>20</sup> She became a naturalized U.S. citizen in July 2000.<sup>21</sup>

Applicant's father, an engineer, was an ethnic Russian born in the Ukraine in 1922. He passed away in 1982.<sup>22</sup>

Her mother, a former university chemistry teacher (now retired) in the Ukraine and also an ethnic Russian, was born in Russia in 1924.<sup>23</sup> In 2002, on behalf of her mother, Applicant submitted an application to the U.S. for an immigration visa, but the process was lengthened because of lost paperwork. The process was finally completed and the visa was approved, and Applicant's mother is expected to relocate to the U.S. within a year, after she completes a scheduled surgery.<sup>24</sup> Applicant speaks with her mother once or twice each week by telephone,<sup>25</sup> and augments her very small pension by sending her approximately \$2,000-\$3,000 per year.<sup>26</sup>

---

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> Tr. at 50.

<sup>20</sup> Government Exhibit 2, *supra* note 12, at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1.

<sup>23</sup> *Id.*

<sup>24</sup> Tr. at 32, 43, 49-50.

<sup>25</sup> Government Exhibit 2, *supra* note 12, at 4.

<sup>26</sup> Tr. at 59-60.

Applicant's husband, a world-renowned prize-winning scientist,<sup>27</sup> was born in Russia in 1944.<sup>28</sup> As noted above, they were married in 1982, immigrated to the United States in 1994, and he, too, became a naturalized U.S. citizen in July 2000. He has one son (born in 1975) from a prior marriage and they have two children together (born in 1981 and 1985, respectively), all of whom reside in the United States.<sup>29</sup> He also has a grandson residing in the U.S.<sup>30</sup> He has never been affiliated with the Russian government, military, or intelligence services.<sup>31</sup> There are no SOR allegations pertaining to Applicant's husband.

Applicant's husband has two sisters, Applicant's sisters-in-law, both of whom were born (in 1938 and 1939, respectively) and raised in Russia.<sup>32</sup> They are Russian citizens and residents.<sup>33</sup> They are both either semi-retired or retired research scientists with Russian institutes,<sup>34</sup> and have never been affiliated with the Russian government, military, or intelligence services.<sup>35</sup> Her older sister-in-law has visited the United States for both scientific conferences and personal reasons since her only son and his wife and their children reside here.<sup>36</sup> Her younger sister-in-law has also visited the United States because she, too, has children and grandchildren residing here.<sup>37</sup> Applicant speaks with her sisters-in-law, primarily about family matters, several times each year, particularly during the holidays or on birthdays.<sup>38</sup>

After becoming a naturalized U.S. citizen in July 2000, Applicant maintained her Russian passport.<sup>39</sup> It was renewed in about 1998, before her naturalization, and again in 2003.<sup>40</sup> She was issued her U.S. passport in August 2000.<sup>41</sup> She traveled to Russia

---

<sup>27</sup> *Id.* at 37-38.

<sup>28</sup> Government Exhibit 1, *supra* note 9, at 17.

<sup>29</sup> *Id.* at 22-26.

<sup>30</sup> Tr. at 48.

<sup>31</sup> *Id.* at 51.

<sup>32</sup> Government Exhibit 2, *supra* note 12, at 4.

<sup>33</sup> Answer to SOR, dated Sep. 11, 2007, at 2.

<sup>34</sup> Government Exhibit 2, *supra* note 12, at 4; Tr. at 41, 50.

<sup>35</sup> Tr. at 50-51.

<sup>36</sup> *Id.* at 42-43, 51, 60.

<sup>37</sup> *Id.* at 51, 60.

<sup>38</sup> *Id.* at 52-53.

<sup>39</sup> Government Exhibit 2, *supra* note 12, at 7.

<sup>40</sup> *Id.*

<sup>41</sup> Answer to SOR, *supra* note 33, at 2.

with her daughter for visits in 1998 and 2000, stayed with her younger sister-in-law on both occasions,<sup>42</sup> and used her Russian passport for both trips.<sup>43</sup> In addition to her two trips to Russia, Applicant also traveled to the Ukraine in 2005 and 2006 to visit her mother,<sup>44</sup> and used her Russian passport for those trips as well.<sup>45</sup>

Applicant maintained and used her Russian passport solely for convenience and cost-savings while traveling to Russia and the Ukraine, and had no intention of reflecting a preference for Russia over the U.S.<sup>46</sup> Applicant's "closest family," her husband and children, live in the U.S. and that is her "strongest bond."<sup>47</sup> In late April 2007, Applicant advised an investigator that she would not wait for the Russian passport to expire, but would take immediate steps to relinquish it.<sup>48</sup> She did so on May 2, 2007, when she surrendered it to her employer's security department and it was destroyed by burning.<sup>49</sup>

When Applicant and her husband became naturalized U.S. citizens, they both took an oath of allegiance to the United States. That oath included the words:<sup>50</sup>

I hereby declare, on oath, that I absolutely and entirely renounce and  
abjure all allegiance and fidelity to any foreign prince, potentate, state, or  
sovereignty, of whom or which I have heretofore been a subject or citizen.

. . .

Neither of them has formally relinquished Russian citizenship under Russian law as it is a long and costly process. However, they are both willing to commence the process, if necessary.<sup>51</sup>

Neither Applicant nor her husband maintains any financial interests in Russia, as they sold everything in 1998.<sup>52</sup>

---

<sup>42</sup> Government Exhibit 2, *supra* note 12, at 3.

<sup>43</sup> Answer to SOR, *supra* note 33, at 1.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 2

<sup>46</sup> *Id.* at letter of explanation; Tr. at 30.

<sup>47</sup> Tr. at 32.

<sup>48</sup> Government Exhibit 2, *supra* note 12, at 7.

<sup>49</sup> Government Exhibit 3 (Letter from Employer's Security Administrator and Security Manager, dated May 2, 2007).

<sup>50</sup> 8 C.F.R. § 337.1(a) (1995).

<sup>51</sup> Government Exhibit 2, *supra* note 12, at 7; Tr. at 77.

<sup>52</sup> *Id.* at 61.

## Ukraine

Ukraine has a parliamentary-presidential type of government since becoming independent of the Soviet Union in 1991. It is undergoing profound political and economic changes as it moves toward a market economy and multi-party democracy. The first “free” elections were marred by government intimidation and electoral fraud. The 2004 presidential election was condemned by the Organization for Security and Cooperation in Europe (OSCE) as flawed by pervasive electoral fraud, and the United States and Europe refused to accept the results. The then-opposition candidate, Viktor Yushchenko, was even poisoned with dioxin. Massive demonstrations helped to overturn the former regime’s electoral fraud, in what has been referred to as the “Orange Revolution,” so named after Viktor Yushchenko’s campaign color. Ukraine’s Supreme Rada—450-member unicameral parliament—passed a vote of “no confidence” in the government, and the Ukraine Supreme Court invalidated the election results. A re-vote was conducted and, in January 2005, Yushchenko became Ukraine’s new President. Subsequent parliamentary and local elections in 2006 and 2007 were in line with international standards.

Having inherited a military force of 780,000 from the Soviet Union, Ukraine is seeking to modernize with an eye toward achieving NATO, rather than the old Soviet, standards. Ukraine has been an active participant in six United Nation peacekeeping missions and has a small number of troops serving in supporting roles with Coalition forces in Iraq. Ukraine’s foreign policy goals, supported by the pro-west President, include membership in the World Trade Organization, the European Union, and the North Atlantic Treaty Organization. Ukraine has peaceful and constructive relations with all its neighbors. Relations with Russia are complicated by differing foreign policy priorities in the region, energy dependence, payment arrears, disagreement over stationing of the Russian Black Sea Fleet in Sevastopol, and some boundary disputes. Ukraine has consistently supported peaceful, negotiated settlements to disputes.

President Bush visited Ukraine on April 1, 2008, and praised Ukraine’s democratic and military reforms. He noted:<sup>53</sup>

Ukraine is contributing to every mission of the NATO Alliance, and honoring the ideals that unite the transatlantic community. This week, Ukraine seeks to strengthen its transatlantic ties through a NATO Membership Action Plan. The United States strongly supports your request. . . . [O]ur two nations share a common vision for the future. We seek to advance a cause of freedom, and help all peoples of Europe live together in security and peace.

---

<sup>53</sup> White House Office of the Press Secretary, Press Release: President Bush and President Yushchenko of Ukraine Exchange Luncheon Toasts, Apr. 1, 2008, at [www.whitehouse.gov/news/releases/2008/04/print/20080401-4.html](http://www.whitehouse.gov/news/releases/2008/04/print/20080401-4.html). While this information was not included in Department Counsel’s request, I take Administrative Notice of these facts on my own initiative.

Domestically, although there remain some serious human rights concerns, with continuing investigations to root out and solve the problems, Ukraine is largely free of significant civil unrest or any organized anti-American domestic political movements. Additionally, freedom of speech and press are guaranteed by law and by the constitution, and authorities generally respect these rights.

There is no evidence that Ukraine is an active participant in economic espionage, industrial espionage or trade secret theft, or violations of export-control regulations.

## **Russia**

Russia is composed of 21 republics. The Government consists of a strong president, a prime minister, a bicameral legislature, and a weak judiciary often subject to political manipulation. It is a vast and diverse country with a population of 142 million people. It achieved independence with the dissolution of the Soviet Union on August 24, 1991, and remains a nuclear superpower that continues to develop politically, socially, and economically. On paper, Russia has recognized the legitimacy of international human rights standards, but it continues to be a “police state” where human rights abuses are rampant. There are numerous reports of human rights abuses, including law enforcement personnel engaged in torture, abuse, and violence to coerce confessions from suspects, with little accountability, despite the fact that the law prohibits such practices; widespread corruption within the police force; arbitrary arrest and detention; politically motivated arrests; abductions; and life threatening prison conditions. The media is largely state-controlled. There are restrictions on freedom of movement within the country, and all adults must carry government-issued internal passports while traveling internally, and they are required to register with the local authorities within a specified time of their arrival at a new location.

Russia’s two main intelligence services are the Russian Foreign Intelligence Service (SVR) and the main Intelligence Directorate of the General Staff (GRU), both overseen by the Russian National Security Council and coordinated through the Permanent Interbranch Commissions of the National Security. Its intelligence capability is significant and focuses on collection of information from the United States. The Soviet Union engaged in a series of high profile espionage missions against the United States, and Russia has continued the tradition. As of 2005, Russia was one of the two most aggressive collectors of sensitive and protected U.S. technology and accounted for the majority of such targeting. Russia also provides technologies which could be used in the construction of weapons of mass destruction and missiles to other countries. It is a leading arms exporter, with major sales of advanced weapons and military-related technology to China, India, Iran, and Venezuela. Nevertheless, the United States and Russia share common interests on a broad range of issues, including counterterrorism and the drastic reduction of our strategic arsenals.<sup>54</sup>

---

<sup>54</sup> It is interesting to note that because of closer diplomatic relations between the United States and Russia, at some unspecified time prior to 1999, the U.S. State Department started issuing Russian diplomats “no escort required” badges to wear during visits to the State Department building.



Russia has attempted to reassert its dominance in, and integration of, the former Soviet states and has generally been successful with Belarus and Armenia. It has remained unwelcomingly active in the internal affairs of several of its neighboring countries—former republics of the Soviet Union or occupied “independent countries”—such as Georgia, Ukraine, Azerbaijan, and Moldova, and has issued threats against Poland, the Czech Republic, and Estonia.

U.S. citizens who have, at one time, held Russian citizenship, may be required to renounce Russian citizenship before applying for a Russian visa in their U.S. passport. Unless a Russian citizen has formally renounced his or her Russian citizenship, he or she risks being considered a Russian citizen and not allowed to depart except on a Russian passport.

## **Policies**

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant’s eligibility for access to classified information.

An Administrative Judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Since the protection of the national security is the paramount consideration, AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”<sup>55</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the Applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the

---

<sup>55</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1).

Government's case. The burden of disproving a mitigating condition never shifts to the Government.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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." Accordingly, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

## **Analysis**

### **Guideline C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 10(a), "exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member" is potentially disqualifying. Under AG ¶ 10(a)(1), this includes but is not limited to: "possession of a current foreign passport." Similarly, under AG ¶ 10(d) "any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship" may raise security concerns.

After becoming a naturalized U.S. citizen in July 2000, Applicant retained the Russian passport that had been previously issued to her, and used it to travel to Russia in 2000, despite already having been issued her U.S. passport. And, in 2003, she renewed the Russian passport, and eventually used it for her trips to the Ukraine in 2005 and 2006. By her actions, she exercised the rights and privilege of foreign citizenship after becoming a U.S. citizen. I find AG ¶¶ 10(a)(1) and 10(d) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. Under AG ¶ 11(a), the disqualifying condition may be mitigated where the “dual citizenship is based solely on parents' citizenship or birth in a foreign country.” Similarly, AG ¶ 11(b), may apply where “the individual has expressed a willingness to renounce dual citizenship.” Also, AG ¶ 11(e) may apply where “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

Applicant explained that her only motivation for using her Russian passport in 2000, 2005, and 2006, was not an indication of a preference for Russia over the United States, but rather solely for her convenience and cost-savings while traveling to Russia and the Ukraine, and it was not her intention to reflect a preference for Russia over the U.S. Furthermore, until 2007, she was unaware of the potential security significance of retaining or using her Russian passport.

Thus, the issue, distilled to its basic components, is: whether Applicant's actions in failing to formally renounce her Russian citizenship under Russian law, and her renewing, possessing, and using her Russian passport, were merely for personal convenience and cost-savings, or indicative of a preference for Russia over the United States. Considering Applicant's explanations, and her subsequent action in surrendering and destroying her Russian passport, and her stated willingness to renounce her Russian citizenship, I find ¶¶ 11(a), 11(b), and 11(e) apply.

## **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 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 mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>56</sup> Applicant's relationship with her mother in the

---

<sup>56</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

Ukraine and her two sisters-in-law in Russia, and her travels to both countries, are current concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other 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” is potentially disqualifying. Similarly, under AG ¶ 7(b), “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information” may raise security concerns. I find AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with her family members who are either Russian or Ukrainian citizen-residents to determine the degree of “heightened risk” or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where “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.” Similarly, AG ¶ 8(b) may apply where the evidence shows “there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” In addition, AG ¶ 8(c) may apply where “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.” In this instance, her relationship with those family members is neither casual nor infrequent. Accordingly, AG ¶ 8(c) does not apply.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, including the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>57</sup> In fact, the Appeal Board has

---

<sup>57</sup> 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).

cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”<sup>58</sup>

Nevertheless, the relationship between a foreign government and the United States 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 take action against the United States through the Applicant. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, 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.

As noted above, since the breakup of the Soviet Union, the United States and Ukraine have developed an increasingly warm and friendly relationship making it unlikely that the Ukraine Government would attempt coercive means to obtain sensitive information. However, it does not eliminate the *possibility* that Ukraine would employ some non-coercive measures in an attempt to exploit a relative. While Applicant’s mother still resides in Ukraine, at least until she is able to emigrate later this year, there may be speculation as to “some risk,” but that speculation, in the abstract, does not, without more, establish sufficient evidence of a “heightened risk” of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. As to her mother in Ukraine, I find AG ¶ 8(a) applies in this case.

Russia is a different matter because it continues to be a “police state” where human rights abuses are rampant, with little accountability. As of 2005, Russia was one of the two most aggressive collectors of sensitive and protected U.S. technology and accounted for the majority of such targeting. Russia’s relationship with the United States, and its human rights record are relevant in assessing the likelihood that Applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. The complicated relationship of Russia to the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her sisters-in-law in Russia do not pose a security risk and she is not in a position to be forced to choose between loyalty to the United States and those extended-family members. With its occasionally adversarial stance and its mixed human rights record, it is conceivable that Russia could target any citizen in an attempt to gather information from the United States.

There is no evidence that Applicant’s sisters-in-law are, or have been, political activists, challenging the policies of the Russian Government. There is no evidence that terrorists have approached or threatened Applicant or her sisters-in-law for any reason. There is no evidence the Russian Government has approached Applicant. There is no evidence that her sisters-in-law living in Russia currently engage in activities that would bring attention to themselves or that they are even aware of Applicant’s work. As such,

---

<sup>58</sup> ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

there is a reduced possibility that they would be targets for coercion or exploitation by the Russian Government, which may seek to quiet those who speak out against it. Moreover, the children and grandchildren of both sisters-in-law reside in the United States, removing one substantial potential source of Russian pressure on either sister-in-law. The situation is mitigated because of the reduced possibility that Russia will exploit her sisters-in-law. She has met her burden of showing there is little likelihood that those relationships could create a risk for foreign influence or exploitation. As to her sisters-in-law in Russia, I find AG ¶ 8(a) applies in this case.

Applicant has been a resident of the United States since 1994. She and her husband became naturalized U.S. citizens, and their two children and his son and grandson all reside in the United States. She surrendered her Russian passport and she is willing to renounce her dual citizenship. They have no foreign financial interests in Russia or the Ukraine. He is fully involved in his children's lives and activities. Applicant and her husband have "such deep and longstanding relationships and loyalties in the U.S., that [they] can be expected to resolve any conflict of interest in favor of the U.S. interest." I find AG ¶ 8(b) applies in this case.

It is true that, since becoming a U.S. citizen in 2000, Applicant took one trip to Russia and two trips to Ukraine to visit either her mother or her sisters-in-law. At the time of her 1998 trip to Russia, she was still a Russian citizen, and that trip should have no current security interest.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant and her "closest family"—her husband, and their two children—have resided in the U.S. since 1994, and became naturalized U.S. citizens in 2000. Her husband's son and grandson also reside here.

Likewise, the families of her two sisters-in-law reside in the U.S., and her mother will soon join the family here. As such, they are not vulnerable to direct coercion or exploitation, and the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is low.

A Guideline B decision concerning Russia and Ukraine must take into consideration the geopolitical situations in those countries, as well as the dangers existing there. Russia is a diplomatic and strategic partner of the United States in some areas where both countries have mutual interests. Russia is a key partner in the search for peace in the Middle East and resolution of problems with Iraq and Iran. Russia, then a part of the Soviet Union, was an important ally in World War II, and then our greatest antagonist during the Cold War. Russia has a mixed human rights record, and like the United States, has been subject to terrorist attacks. Russia is a known collector of U.S. economic intelligence and proprietary information, but the potential for pressure, coercion, exploitation, or duress based upon Applicant's remaining ties to Russia—her two sisters-in-law without any affiliation or relationship to the Government of Russia—are insufficient to raise a security concern.

Ukraine, on the other hand, is a rapidly developing multi-party democracy, contributing to NATO Alliance missions. Ukraine has aligned itself with the West and applied for NATO membership, an action supported by the U.S. because both nations share a common vision for the future. It is in Ukraine's interests to maintain friendship with the U.S. to counterbalance Russia, and it is very unlikely Ukraine would forcefully attempt to coerce Applicant through her mother still residing in Ukraine. Furthermore, there is no evidence that Ukraine is an active participant in economic espionage, industrial espionage or trade secret theft, or violations of export-control regulations. (See AG ¶ 2(a)(8).)

As to Applicant's actions in renewing and using her Russian passport on three occasions after she became a naturalized U.S. citizen, they raise several different issues. When Applicant renewed her Russian passport, she had no intention of reflecting a preference for Russia over the United States. At that time, she was unaware of the security significance of her actions. When she did learn of the significance, Applicant took immediate steps to relinquish her Russian passport, and did so in May 2007, when she surrendered it to her employer's security department and it was destroyed by burning. (See AG ¶¶ 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(5), 2(a)(7), and 2(a)(9).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her foreign influence and foreign preference concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

ROBERT ROBINSON GALES  
Chief Administrative Judge