

DATE: December 10, 2007

In Re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-25353
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**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 34-year-old linguist/interpreter was born in Russia (then the USSR) in 1974 to a Russian mother and a Yemeni father. The father subsequently returned to Yemen. Applicant came to the United States (U.S.) in the early 1990s to attend college, married twice to U.S. citizens, and became a naturalized citizen in 2002. She has provided translation services to the US military and other agencies, receiving substantial high praise for her dedication and loyalty to U.S. interests. Her mother is a citizen/resident of Russia and her father is a citizen/resident of Yemen. Both are retired and have no connection with their governments. Applicant's ties to the U.S. are of long standing and deep. Mitigation has been adequately established. Clearance is granted.

STATEMENT OF THE CASE

On May 16, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On August 23, 2007, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me on September 19, 2007. On October 9, 2007, a Notice of Hearing was issued setting the hearing for November 8, 2007. At the hearing the Government introduced five (5) exhibits (Government's Exhibit (GX) 1 - 5). At the hearing, the Government also offered eight (8) Official Notice Documents, relating to Russia, which were marked as Official Notice (ON) Documents I-VI. The Applicant testified and introduced eight (8) exhibits (Applicant's Exhibits (AX) A - H. After the hearing, the Government submitted six (6) additional Official Notice Documents, relating to Yemen. Applicant submitted four more documents as evidence (AX I-L). All exhibits and Official Notice documents were admitted. The transcript (Tr) was received at DOHA on November 26, 2007.

FINDINGS OF FACT

Applicant is a 33-year-old linguist/translator for a defense contractor. The SOR contains five (5) allegations under Guideline B (Foreign Influence). Applicant admits allegations 1.a., 1.c., 1.d., and 1.e. She denies allegation 1.b. All specific admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following FINDINGS OF FACT as to the status, past and present, of each SOR allegation.

Guideline B (Foreign Influence)

1.a. -- Applicant's 60-year-old mother is a native-born citizen and resident of Russia. She was a teacher of "little kids" until she retired about three years ago. Now, she basically takes care of her home (Tr at 28, 41). She has never worked for the Russian government (Tr at 44). Applicant's mother came to the U.S. once, to attend Applicant's wedding in 2005 (Tr at 43). They speak on the phone about once a month and occasionally exchange cards (Tr at 44). Her mother does not know what Applicant does or that she is seeking a security clearance.

1.b. - Applicant's 63-year-old father is a citizen and resident of Yemen. Before he retired, he was an agricultural specialist for the Yemeni government, and worked with American and European organizations such as U.S. Aid and the United Nation's Food and Agricultural Organization (FAO). He was a resident of Russia when Applicant was born to him and Applicant's mother. Applicant visited him in Yemen in 2001 (GX 5) and 2005 (Tr at 48). She considers them

to be "not extremely close (Tr at 46) or "average" (Tr at 47). They speak about once a month (*Id.*). He knows that she works as a translator, but not what she does or that she is seeking a security clearance (Tr at 48).

As s far as Applicant knows, neither her father nor mother has been politically active (Tr at 29). It is improbable" that either one will be placed in a "politically compromising position (*Id.*).

1.c. - Applicant's sister was born in Russia but is now a citizen and resident of France. She is married to a French citizen and is a homemaker (Tr at 30). She as is not politically active (*Id.*).

1.d. - Applicant's aunts are native-born citizens and residents of Russia. She has contact with only one of her aunts, who is in her late 70s, but the contact is "very limited" (Tr at 30). She has no contact with the other aunt (Tr at 30, 31).

1.e. - Applicant has traveled to Russian on two occasions. Her purpose is to visit her mother. She sees herself as a dutiful daughter (Response to SOR and Tr at 31). The shared activities center on food, talk, and walks around the area (*Id.*). Since obtaining her U.S. passport in 2002, she has used that passport for all travel purposes (Tr at 40).

Applicant came to the U.S. in about 1992, when she was 18. Thus, she has lived in the U.S. for about half of her life, including the "formative years" (Tr at 32). She was educated in American schools, attended an American university, and received a B.A. in communications. She became an American citizen in March 2002, at which time she obtained a U.S. passport. Her Russian passport expired in May 2002 and was never renewed.

Since taking the oath of allegiance to the U.S., which included renouncing any allegiance to a foreign nation, she has not considered herself to be a dual citizen of Russia (GX 1, GX 2, and GX 5). She owns property here, worth about \$500,000 (Tr at 36) and is married to an American citizen (Tr at 32).

Her sole tie to Russia is the presence of her mother and aunt being there. Her sole tie to Yemen is the presence there of her father. She has never lived there since her teens. She has no connection with either its government or its culture, or that of Yemen. Beyond what she has described, she has no personal, financial, or emotional ties to either country (Tr at 50-53). Applicant once told her parents she was working as an interpreter in a "court or medical" setting. She has never told them differently (Tr at 55).

Applicant avers that:

"This country has given me much for which I am very grateful, and I believe roots run deep here. I am a loyal, law abiding citizen of the U.S., would not act in any way which would be inconsistent with the interests of this country. I have never acted in a way which would cause anyone to question my loyalty to the United States of America" (Tr at 33; *see, also* GX 2).

Applicant submitted a letters of thanks from the Department of Homeland Security (AX K) and an enthusiastic letter of recommendation from a Marine Corps Lt. Colonel commanding the Detachment that used her translation service (AX L)

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, Enclosure 2 at Section 2, pages 18, 19). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

Official Notice Documents

The Government has introduced Official Notice Documents pertaining to Russia and Yemen, but not France. Accordingly, I conclude that Applicant's having a sister in France is not considered a security concern by the Government.

The first set of Official Notice documents discusses the official U.S. concern with Russia - that it continues to maintain an ongoing program of actively collecting military and economic information within and against the United States. The details are found in Official Notice Documents

1-8 and abstracted in Department Counsel's Administrative Notice cover document of September 18, 2007.

The second set of Official Notice Documents shows that the official U.S. concern with Yemen is that Yemen is that the government has a poor human rights record, is often corrupt, and tends to tolerate, if not assist or even encourage terrorist groups acting against its own people and foreigners, including Americans. The details are found in Official Notice Documents 9-14 and abstracted in Department Counsel's Administrative Notice cover document of November 13, 2007. Specifically, the U.S. State Department recently warned of a growing presence by Al Qaeda and a terrorist threat considerably higher than in the past (U.S. Dept of State, *Travel Warning - Yemen*, September 24, 2007). These documents do not indicate that Yemen is considered to be actively involved in espionage or gathering sensitive information relating to the U.S. The concern is more with terrorist elements operating in that country.

The Official Notice Documents indicate that both countries are in the high risk category as to espionage, the gathering of sensitive information, and/or terrorist activities. Accordingly, as to both countries, Applicant has a heavy burden of establishing that, despite the Government's concerns, it is nonetheless consistent with the national interest for Applicant to have access to the nation's secrets.

CONCLUSIONS

Applicant is a 33-year-old linguist/translator. She was born in Russia to a Russian mother and a Yemeni father and grew up fluent in both Russian and Arabic. When she was a child, her father returned to Yemen. Applicant was working as a linguist/translator when she was recruited by her current employer, who wanted her to work on contracts that required a security clearance, including in Iraq (Tr at 56). For several years, she has been working on non-classified aspects of that position.

As is the case with all Applicants who reported family and relatives in foreign countries, Applicant faces the logically difficult, if not impossible, task of proving a negative; i.e., that something that has not happened in the past is at risk of happening in the future.

What she can establish how she is likely to act in the future. Applicant came to the U.S. in about 1992, to attend college. She became a naturalized U.S. citizen in March 2002 (Tr at 22 and GX 1 and GX 5). Her present employer contracts with the Department of Defense to provide translation of oral and written material in a variety of foreign languages. Applicant is fluent in Russian and Arabic. The company hired her two ears ago to provide "simultaneous translation" services." There is a real need of linguists with her level of competence and they are in short supply" (AX A).

Another company for whom she has provided such services evaluates her as follows:

We "believe [her] to be a dedicated and highly competent individual and with her qualities and numerous abilities she is an invaluable asset to any workplace. I highly recommend [her] as a candidate to be approved for any sensitive government work for which she is applying (AX B)."

A Special Agent of the Drug Enforcement Administration (DEA) praises her work in interpreting words spoken in dialects of a foreign language and recommends her for a security clearance. The DEA agent was so impressed with her work ethic that she was given access to highly sensitive information. She was considered to be a "trustworthy employee who exemplified high levels of integrity and a strong work ethic, unparalleled by any other translator I have worked with" (AX C).

Applicant states that she has worked a translator for about 10 years, including providing services for several U.S. Government agencies. She has always done so with "utmost care" and does not discuss sensitive information with any third parties. Her "family [overseas] does not know the nature of [her] work and therefore cannot be put in any compromising position." She has not had any problems with the several U.S. Government agencies with whom she has worked (AX D).

Applicant has documented the nature of her past employment. A recent letter from her employer states that Applicant:

has worked under contract . . . to support US government personnel and/or military personnel in performing translations and interpretations in support of the War on Terrorism; full-time work in excess of 50 hours/week usually under harsh and austere conditions, required travel for extended periods of time" (AX E of October 17, 2007).

Her employer also cites Applicant as having been granted an "interim Secret" clearance" by "DISCO" in 2003/2004, with no cited problems (AX F, of October 4, 2007). On October 12, 2007, she received a "Certificate of Appreciation" from a U.S. Army Civil Affairs Battalion: "In Recognition of [her] generous contribution to the invaluable training of our Soldiers. We sincerely express our gratitude and thanks" (AX G).

Last, Applicant has documented her financial ties to the U.S. - her ownership of a home valued at more than \$200,000 (AX H).

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 indeed 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 interests. 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.

Disqualifying Condition - 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

Mitigating Conditions - 8.(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities 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.; and 8.(b) there is no conflict of interest, either because of the individual's sense of loyalty or obligation to the foreign person, group, organization, or country is so minimal or the individual has such deep and longstanding relationships and loyalties that the individual can be expected to resolve any conflict of interests in favor of the U.S. interest.

In summary, as established by her own words and conduct, and the highly favorable comments from others in positions of considerable security significance, Applicant has (1) demonstrated an unequivocal preference for the United States, (2) renounced her Russian citizenship upon becoming an American, (3) never renewed her Russian passport; and (4) has shown such strong ties to the United States by marriage and by placing herself in dangerous positions in defense of U.S. interests, that no "heightened risk" has been shown.

I conclude that Applicant would never act inappropriately in a national security context. (Guideline B: Foreign Influence at 7.(a). To the contrary, even with her parental ties to Russia and Yemen, the record demonstrates that she "can be expected to resolve any conflict of interest in favor of the U.S. interest" (*Id.*, at 8.(b)).

In conclusion, the totality of the record, evaluated under the "whole person" concept, shows that Applicant possesses the judgment, reliability, and trustworthiness required of someone seeking a security clearance.

FORMAL FINDINGS

Formal Findings for or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of the Directive are as follows:

Guideline B (Foreign Influence)	For the Applicant
Paragraph 1	For the Applicant
Subparagraph 1.a.	For the Applicant
Subparagraph 1.b.	For the Applicant
Subparagraph 1.c.	For the Applicant
Subparagraph 1.d.	For the Applicant
Subparagraph 1.e.	For the 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 or continue a security clearance for Applicant.

**BARRY M. SAX
ADMINISTRATIVE JUDGE**