

2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 3, 2007. He answered the SOR in writing on November 16, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on July 17, 2008. The case was assigned to another Administrative Judge on July 17, 2008. The case was transferred to me on August 4, 2008. DOHA issued a notice of hearing on August 4, 2008, and I convened the hearing as scheduled on August 13, 2008. The Government offered Government Exhibits 1 and 2, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through N, without objection. DOHA received the transcript of the hearing (Tr.) on August 20, 2008. The record closed on August 20, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Russian Federation (Russia). (Transcript at 8-11.) The request and the attached documents were not admitted into evidence, but are included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

The Applicant is 58, married, and has a Post-Graduate degree. He is employed by a defense contractor and seeks a security clearance in connection with his employment in the defense industry. In his Answer to the SOR, the Applicant admitted all of the factual allegations. He also provided additional information to support his request for eligibility for a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant.

The Applicant, who is a native born American citizen, and his immediate family all live in the United States. This includes his Russian born wife and her daughter, as well as his children by a previous marriage to an American citizen. The Applicant and his

wife were married January 22, 2004. His wife and step-daughter emigrated to the United States on May 17, 2005. (Applicant's Exhibit L.)

The Applicant retired from the United States Armed Forces as a field grade officer. Beginning in February 1999, his last duty assignment was to a Department of Defense organization that was involved in negotiations with the Russian government. This entailed several trips to Russia over the following years. The Applicant retired from this position in September 2002. (Transcript at 33-35, ;Applicant's Exhibit J.)

Following his retirement, the Applicant was employed by two Defense contractors to work in Russia in conjunction with the same program. (Transcript at 36-39, 42-43.) He worked in Russia for another year and during this period he met his now wife. She was employed by one of the Defense contractors as their office manager. That is how they met. (Transcript at 43-46.) She is currently employed as the administrative assistant to the president of a company in the United States. Her annual salary is approximately \$60,000.00 plus equity shares in the company. (Transcript at 99-100; Applicant's Exhibit L at 10.) The Applicant's assets in the United States amount to about \$120,000.00. He receives retirement pay from the military as well as his salary. (Transcript at 93-95.)

The Applicant's wife owns her apartment in a small city in Russia. She is also half owner with her mother of another apartment in the same city. The combined value of this real property is approximately \$50,000.00. However, according to the Applicant, there are so many bureaucratic hurdles to jump through, including the requirement that his wife go to Russia to sell the property, that in reality the property is worthless. The Applicant's wife signed powers of attorney allegedly transferring all interest in these two properties to her mother. The Applicant acknowledges that the legal validity of these documents is questionable. (Applicant's Exhibits D and E; Transcript at 70-73, 90-93.)

The Applicant's wife loves living in the United States, wants to be a citizen, and submitted her application for American citizenship as soon as she was able to do so, in February 2008. (Transcript at 57-59, 67-68; Applicant's Exhibit L.) The Applicant's step-daughter is a legal Permanent Resident of the United States. She will be eligible to apply for citizenship in February 2010, and submitted a sworn statement indicating that she will do so at that time. (Transcript at 59-61, 68; Applicant's Exhibit C.)

The Applicant traveled to Russia in 2003, 2004 and 2005. He was not employed in the Defense industry at that time. The trips were made after he had a relationship established with his now wife, and the trips continued after they were married. He would stay in Russia for various periods of time, up to several months, during this period. During this time he was also caring for his elderly and ill parents in the United States. (Transcript at 43-51.)

While he was in Russia, the Applicant was asked by an organization connected to the United States Government to assist a small Russian company with translations. He eventually worked for four small companies in Russia. He was paid a nominal sum

for his work, approximately \$1,300.00. He has no further connection with any company or organization or person in Russia. (Transcript at 51-55; Applicant's Exhibit F.)

None of the Applicant's direct relatives were members of the Communist Party or were connected to the Soviet or Russian defense establishment. His wife and step-daughter receive no funds of any type from the Russian government.

The Applicant's mother-in-law and father-in-law are residents and citizens of Russia. His wife talks to her mother by telephone on an occasional basis. (Transcript at 70.) She has no relationship of any type with her father, who divorced her mother when the Applicant's wife was very young. (Transcript at 69-70.) Neither of these relatives are members of the Communist Party or were connected to the Soviet or Russian defense establishment.

The Applicant has contacts with Russia. Accordingly, it is appropriate to discuss the situation in Russia at this time.¹ I take administrative notice of the following facts. Russia is a federation made up of 21 republics. Its government has a poor human rights record and it is plagued with corruption, media suppression, politically motivated crimes, and human rights violations. Russia has a significant intelligence capability that it retained from the Soviet Union. Russia's intelligence efforts continue to increase in sophistication, scope, and number. It has an aggressive industrial espionage and intelligence collection program targeting sensitive and protected U.S. technology. Russia's government sells to other countries technology with application for weapons of mass destruction (nuclear and biotechnology) and missiles. It has provided such technology and support to China, Venezuela, India, and Iran against U.S. wishes. In 2008 Russia invaded its neighbor, Georgia, in connection with a long-simmering border dispute. Russia also has a continuing rebellion in Chechnya.

Mitigation

The Applicant submitted letters and other documents. They show that the Applicant is a highly respected expert in his field, and that he has provided valuable services to the defense efforts of the United States. People who have worked with him in the past, and currently, believe him to be an honest man and recommend him for a security clearance. Several of these people also worked with the Applicant's wife in Russia. He is also a leader in two Defense related civilian support organizations, serving as President for one of them. (Transcript at 39-42, 63-67; Applicant's Exhibit I.)

His officer evaluations show that he was an outstanding officer for his entire career, successful and well thought of. (Applicant's Exhibit J.)

¹All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). 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.

These guidelines are not inflexible rules of law. Instead, recognizing 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 decision. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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. The Government reposes a high degree of trust and confidence in 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has family members in Russia (Guideline B)

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows:

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 Applicant's entire immediate family lives in the United States. It is obvious that the Applicant spent a great deal of time, trouble and money to move his immediate family here. His wife and step-daughter, however, have connections to Russia. As described above, his wife's mother and father still live in Russia. She has no relationship whatsoever with her father, but she does contact her mother on an occasional basis and twice sent her money. That relationship cannot be seen as being casual.

The evidence is also clear, however, that the Applicant's wife and step-daughter have acculturated to the American way of life very quickly. The wife has submitted her application to become an American citizen as early as she could. As stated by the Applicant, she was investigated by the American embassy in Russia, as well as by United States Citizenship and Immigration Services before being allowed to emigrate to the United States.

Based on the evidence the Government has presented, the following Disqualifying Conditions apply to this case: 7.(a) *Contact with a foreign family member . . . 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;* (b) *connections to a foreign person . . . 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 . . . by providing that information;* and (d) *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.* I have also considered the information concerning the Russian government, provided by Department Counsel in his Administrative Notice documents.

On the other hand, the Applicant has provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his background: 7(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.;* (b) *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;* and (c) *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.*

The evidence shows that the Applicant was a successful and decorated military officer for 20 years. Since that time he has put his intelligence and abilities to work for several Defense contractors, as well as private organizations interested in the defense of the United States. He is respected by his friends and colleagues. His connections to the United States are deep and long-standing. The Applicant's travels to Russia, as well as his consulting with several small firms while there, has no current security significance. I have also considered his wife's financial interest in the two apartments in Russia, as well as her communications with her mother. Under the facts of this case, especially given that the wife has a substantial personal income here, those issues have little security significance.

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) 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 commonsense 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. The personal beliefs of this particular Applicant, a retired officer of undoubted ability who has been extremely forthcoming with the Government, are such as to make him an Applicant of the highest order. Based on his actions and testimony, as well as the statements of others, I can easily find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 B: FOR THE APPLICANT

Subparagraphs 1.a through 1.f.: For the 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.

WILFORD H. ROSS
Administrative Judge