



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



In the matter of:	)	
	)	
XXXXXX, Xxxxxxx	)	ISCR Case No. 07-04496
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: Kathleen E. Voelker, Esquire

September 30, 2009

**Remand Decision**

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METZ, John Grattan, Jr., Administrative Judge:

On 22 October 2008, the Appeal Board remanded this case to me for further proceedings in accordance with its decision and the Directive. The issues on remand involve only Guideline B (Foreign Influence). On 19 November 2008, Department Counsel submitted a Supplemental Request for Administrative Notice in view of the Appeal Board's ruling. Applicant did not respond to the request.

In June 2009, I reopened the record to permit the parties to augment the record consistent with the board's ruling. I gave the parties until 26 June 2009 to submit additional relevant and material evidence consistent with the Appeal Board's ruling. Each side made a timely submission, to which the opposing side made no objection.

**Findings of Fact**

Except as noted below or modified by the Appeal Board, I incorporate by reference the findings of fact from my 30 June 2008 decision [attached].

Applicant's post-hearing submissions establish that her mother became a naturalized U.S. citizen in October 2008. The submissions also establish that Applicant and her son formally renounced their Russian citizenship in March 2008.<sup>1</sup>

Ukraine—a former Soviet Republic—has a parliamentary-presidential type of government since becoming independent of the Soviet Union in 1991. It is undergoing profound political and economic change as it moves toward a market economy and multiparty democracy. After the first free elections in December 1991, presidential elections were marred by government intimidation and electoral fraud. Subsequent parliamentary and local elections in 2006 and 2007 were in line with international standards.

Ukraine has significant human rights problems. Even though prohibited by law, there have been instances of torture, arbitrary detention of persons critical of the government, and warrantless violations of privacy. Ukraine inherited a military force of 780,000 from the Soviet Union, and seeks to modernize to achieve NATO standards. Ukraine participates in six United Nations peacekeeping missions and has a small number of troops serving in supporting roles with coalition forces in Iraq. Ukraine is the only non-NATO country supporting every NATO mission. Ukraine's foreign policy goals include membership in the World Trade Organization, the European Union, and the North Atlantic Treaty Organization.

Ukraine has peaceful and constructive relations with its neighbors. Relations with Russia are difficult and complex, however, due to differing foreign policy priorities in the region, energy dependence, payment arrears, disagreement over stationing of Russian military forces, and some boundary disputes. The United States strongly supported Ukraine's request to join NATO. Russia opposes Ukraine's entry into NATO. However, NATO allies have stated that Ukraine will eventually become a member of the alliance.

Scientists from Ukraine are among the most frequent visitors to Department of Energy (DOE) facilities in the U.S., which is attributable to the fact that Ukraine was the site of the Chernobyl disaster in 1986 and that Ukraine currently maintains 15 electricity-producing nuclear power plants. Ukraine is not otherwise on the list of active collectors of sensitive and protected U.S. technology. Furthermore, the record does not indicate if Ukraine targets U.S. citizens through family members residing in Ukraine to obtain protected information.

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<sup>1</sup>Department Counsel invites me to give this evidence less weight because Applicant herself provided the translation of the Russian-language document from the Russian Embassy. I decline to do so for a number of reasons. First, I found Applicant a credible witness at her hearing, when she was certainly an interested party, and find no reason not to do so here. Second, she certified the accuracy of the translation, and she had been previously advised of the penalties for making a false statement to the government. Finally, after appropriate warning, I have routinely admitted applicant-translated documents into the record, and used applicants as translators for witnesses whose English is not adequate for hearing purposes.

## Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness to protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>2</sup>

## Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, **whether the country is known to target U.S. citizens to obtain protected information** (my emphasis) and/or is associated with a risk of terrorism.<sup>3</sup> Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>Revised Adjudicative Guidelines, ¶ 6.

willingness and ability to target protected information, and to target expatriates who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>4</sup>

In this case, the Appeal Board directed me to find that the government established a case for disqualification under Guideline B, and I so find. However, the Appeal Board did so in part by considering events (the Russian incursion into the former Soviet Republic of Georgia in August 2008) that not only occurred after the record in this case closed, but after the decision was issued. The Appeal Board also emphasized the language above that the identity of the country matters—while dispensing with a consideration of the highlighted language above. However, considering the country involved, Russia and the U.S. enjoy competitive foreign relations, although they cooperate on a wide variety of issues. While Russia is actively engaged in the collection of U.S. information, there is still no evidence suggesting that it targets its expatriate citizens such that would make Applicant or her family members likely targets for coercion, duress, or influence. However, for the sake of this analysis, I will assume that it does.

The Appeal Board also directed me to engage in a current and accurate assessment of the “geopolitical situation” and the “security/intelligence profile” of Russia vis-a-vis the U.S. It is axiomatic that such assessments are essential in a Guideline B case, but as the Appeal Board infers, such assessments are necessarily fluid. Yet, if I take the Appeal Board decision to its logical conclusion, I should be scanning today's headlines for evidence of dramatic geopolitical shifts or taking into consideration the possibility that upcoming elections in Ukraine will transfer power from the current pro-Western government seeking greater integration with European economies and politics to a pro-Russia government that can be expected to pursue closer alignment with Russia. Fortunately, this case can be resolved without such speculation.

Despite a softening of relations with Russia after the 1991 collapse of the Soviet Union, and greater collaboration on some issues in the wake of 9/11, Russian geopolitical imperatives remain largely unchanged from those of the Soviet Union, possibly even from those of Czarist Russia. Two of the most important geopolitical goals have been obtaining and maintaining access to a warm-water port on the Black Sea and—because of the absence of natural defensive barriers on the Russian plain—maintenance of a sphere of influence in neighboring states, whether through allied Soviet Republics or buffer states sympathetic to Russian interests.

The Russian incursion into Georgia established that which is not seriously in contention: that Russia will act with armed force when it perceives that such force is

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<sup>4</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

necessary to protect its interests. Russia did so in Hungary and then-Czechoslovakia when it was part of the Soviet Union. It is no great surprise that it did so in Georgia. It would not be a great surprise if it did so in Ukraine or any of the other former Soviet Republics that have tried to establish closer ties with the West. The only real difference is that, in the immediate aftermath of the collapse of the Soviet Union, Russia lacked both the political cohesiveness and the military power to pursue those geopolitical goals. Russia lacks them no more. Thus, Russia may be expected to move to pull its former republics back into its orbit, whether by peaceful means (supporting pro-Russia candidates in Ukraine), aggressive economic actions (cutting natural gas transmission to Ukraine), or military force.

Considering Applicant's circumstances, I find—in accord with the Appeal Board's ruling—that the government established that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of her family contacts with her brother in Russia, but not with her aunt in Ukraine. Ukraine is not in the same category as Russia regarding acquisition of protected U.S. information. However, Applicant mitigated the security concerns. Applicant's foreign travel to Russia in 2000 and Ukraine in 2004 have no independent security significance. Her parents have effectively been a non-issue since 1998, when they immigrated to the U.S., and even more so now that both her parents, who still live in the U.S., are U.S. citizens. Applicant's aunt has no connection to the Ukrainian government, and Applicant has virtually no contact with her.

Similarly, Applicant's brother has no connection to the Russian government. Applicant has sponsored him and his wife to immigrate to the U.S. She had more frequent contact with him during the time she gave him power-of-attorney to remove her name from residence records in Russia and obtain the documents she needed to renounce her Russian citizenship. However, her contacts have returned to the less-frequent levels she had since she came to the U.S. Department Counsel has articulated no reasonable argument I should consider either her aunt or her brother as a potential source of influence on Applicant. I conclude that it is unlikely she can be pressured based on her contacts with her aunt or her brother. Accordingly, I resolve Guideline B for Applicant. Consideration of the nine "whole person" factors lead to the same result.

### **Formal Findings**

#### **Paragraph 2. Guideline B: FOR APPLICANT**

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Subparagraph e:	For Applicant

## **Conclusion**

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. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge