



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



In the matter of:)	
)	
XXXXXXX, Xxxx)	ISCR Case No. 07-14508
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2009

Remand Decision

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. 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 my previous findings of fact from my 30 June 2008 decision [attached]. I note that Department Counsel did not dispute my findings of fact on appeal. The Appeal Board remand goes only to the sufficiency of my findings about the geopolitical situation in Russia.

Applicant's post-hearing submissions establish that she has not traveled to Russia since November 2007, and has no intention to do so in the future. She also established that relations between Russia and Georgia were much more stable than in August 2008.¹

Russia—a former Soviet Republic—is a nominal democracy with a mixed human rights record. It has been the target of terrorist activity in recent years. Russian federal forces pursuing terrorists act with impunity while engaging in torture, summary executions, disappearances, and arbitrary detentions. Additional problems include corruption, media suppression, life-threatening prison conditions, and corruption in law enforcement.

Russia imposes rigid visa requirements on foreign travelers entering, and traveling within, Russia. 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.

Russia has an active, significant, recent, and ongoing collection program focusing on the U.S. As of 2005, Russia was one of the two most aggressive collectors of sensitive and protected U.S. technology and accounted for much of such targeting. Much of Russia's targeting occurs through direct visits to U.S. facilities. However, the record does not indicate if Russia targets U.S. citizens through family members residing in Russia to obtain protected information. Furthermore, the U.S. and Russia cooperate over a broad spectrum of foreign-policy issues, particularly counter-terrorism efforts.

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 common sense 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.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The government

¹In so doing, she provided updated documents for official notice, and objected to my consideration of the documents submitted by Department Counsel as being outdated. I overrule the objection because the issue raised goes only to the weight to be given the government's documents.

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.²

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 and/or is associated with a risk of terrorism.³ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's 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.⁴

In this case, the Appeal Board has 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. Nevertheless, 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

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

³Revised Adjudicative Guidelines, ¶ 6.

⁴Revised Adjudicative Guidelines, ¶ 7.(a).

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 shifts in the international political landscape. 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 establishes that which is not seriously in contention: That Russia will act with armed force when it perceives that such force is necessary to protect its geopolitical interests. Russia did so in Hungary and then-Czechoslovakia when Russia 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 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 (Georgia).

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 contacts in Russia. However, Applicant’s foreign travel to Russia has no independent security significance, particularly the two most recent trips to bury her mother and visit her father’s grave. That travel, unlikely to be repeated, serves only to demonstrate her ties to two people who are beyond the reach of Russia as focal points for influencing Applicant.

Her contacts with her ex-husband, former mother-in-law, and two friends—none of whom is connected to the Russian government—are minimal. Her contacts with her brother—now still tenuously connected to the government through his retirement—are virtually non-existent. Department Counsel has articulated no reasonable argument why

I should consider any of these contacts as potential sources of influence on Applicant. Even with Russia's active information gathering, not every contact born of civility (ex-husband), friendship (her two friends), or family connection (ex-mother-in-law, brother) rises to the level of security concerns, particularly given the infrequency of contact. Applicant's 10-year work history in the U.S.S.R.—nearly 30 years removed—was with the Soviet government only in the broadest possible sense, and insignificant as a source for security concerns. There is no possible reason to think Applicant could be influenced by a government she renounced nearly 30 years ago.

Even finding a case for disqualification under ¶¶ 7.(a) and (b), I find the security concerns mitigated.⁵ Applicant fled Russia for a better life with her daughter. In so doing, she renounced her Russian citizenship, became a stateless person, and immigrated to the U.S. for political asylum. Her family and friends are not so situated as to be a likely source of pressure.⁶ Her loyalty to the U.S. is so great, and her disdain for Russia so palpable, that there is no conflict of interest that can be exploited.⁷ Finally, there is no reasonable characterization of her contacts with family and friends in Russia as other than casual and infrequent.⁸ In addition, the U.S. Government has already significantly vouched for her character, having authorized her to be issued an official passport with which to carry out her contract work for the government. I conclude that it is unlikely she can be pressured based on her limited contacts with her family and friends in Russia. Accordingly, I resolve Guideline B for Applicant. Consideration of the nine “whole person” factors lead to the same result.

⁵Revised Adjudicative Guidelines, ¶ 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; (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individuals'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.

⁶Revised Adjudicative Guidelines, ¶ 8.(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.;

⁷Revised Adjudicative Guidelines, ¶ 8.(b) there is no conflict of interest, either because the individuals sense of obligation to the foreign group 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;

⁸Revised Adjudicative Guidelines, ¶ 8.(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

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

JOHN GRATTAN METZ, JR
Administrative Judge