



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



| | | |
|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 07-16090 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Dan Cron, Esq.

July 31, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on June 29, 2007. On January 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On February 28, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on March 21, 2008. The case was assigned to me on March 26, 2008. On March 27, 2008, a Notice of Hearing was issued scheduling the hearing for April 14, 2008. On April 1, 2008, Applicant requested a delay of the hearing because of his heavy workload and his intention to retain counsel. Department Counsel had no objection. On April 2, 2008, the hearing was cancelled. On June 4, 2008, a Notice of Hearing was issued scheduling the

hearing for June 26, 2008. The hearing was held on that date. The Government offered Government Exhibits (Gov) 1-3, which were admitted without objection. The Government requested that administrative notice be taken of one document with 8 attachments. The document was marked as Administrative Notice Document I (Admin Not I) without objection. Applicant's counsel called eight witnesses, including Applicant, and submitted 7 exhibits which were admitted as Applicant Exhibits (AE) A - G without objection. The record was held open until July 17, 2008 for Applicant to submit additional documents. He timely submitted three documents which were admitted as AE H, I, and J. Department Counsel's response to Applicant's post-hearing submissions is marked as Hearing Exhibit 1. DOHA received the transcript of hearing on July 15, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Administrative Notice

The Russian Federation is composed of 21 republics. (Admin Not I, Doc 1 at 1.) The Government consists of a strong president, a prime minister, a bicameral legislature and a weak judiciary. 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. It is a nuclear superpower that continues to develop politically, socially, and economically. (Admin Not I; Doc 2 at 1-2; Doc 3 at 2-3; Doc 4 at 1.)

The threat of terrorism in Russia continues to be significant. Travel in the vicinity of Chechnya may be dangerous, despite Russian efforts to suppress the terrorists. Acts of terrorism include taking hostages and bombings. (Admin Not I, Doc 4 at 4-5; Doc 8 at 17.)

Russia has recognized the legitimacy of international human rights standards, but human rights abuses continue. Both Russian federal forces and Chechen rebel forces 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. (Admin Not I, Doc 2 at 1-3, 5-6, 10-11, 5; Doc 3 at 7; Doc 4 at 4-5; Doc 8 at 17-18.)

The Russian Federation's intelligence capability is significant and focuses on collection of information from the United States. As of 2005, Russia and China were 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. (Admin Not I, Doc 6 at 6-17.)

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. (Admin Not I, Doc 4 at 4.)

Findings of Fact

In his Answer to the SOR, notarized on February 28, 2008, Applicant admitted to all the SOR allegations.

Applicant is a 43-year-old program manager and safety engineer employed with a Department of Defense contractor. He has worked for the same employer since 1999. He has a bachelor of science degree in safety engineering. He has served in the National Guard since 1991, currently serving in the rank of Lieutenant Colonel. He has held a security clearance since 1989 without incident. He is married and has no children. (Tr at 157, 159-161, 167; Gov 1.)

Applicant comes from a family with a long history of military service to the U.S. His father retired at the rank of Colonel after 28 years of active duty military service. During his formative years, Applicant's family moved to different locations based on where his father was stationed. Applicant's immediate family, his parents and sister, are citizens of and reside in the U.S. (Tr at 155; Gov 1; AE I.) In 2004, Applicant deployed to Iraq for a six month period. He was also activated during Hurricane Katrina. He currently is assigned to state headquarters. Upon learning that his former squadron is going to be involuntarily activated to deploy to Iraq in June 2009, he volunteered to go with them. (Tr at 148, 161-162, 189.)

In October 2004, shortly after his return from his deployment to Iraq, Applicant was invited to go to the airport with a close friend and his family to welcome a Russian exchange student. His friend and his wife served as her host family. They initially met the exchange student during a visit to Russia as part of their duties in an international service organization. The exchange student was an officer in the service organization chapter located on her college campus. Applicant's friend and his wife invited her to come to the U.S. as an exchange student. (Tr at 26-27, 37-38, 114-117, 164.)

About a month after the Russian exchange student arrived, Applicant's friend telephoned him. His friend explained that the exchange student had been involved in minor car accident and asked if Applicant could go to his house and help the exchange student with insurance and making arrangements to fix the automobile because he and his wife were out of town. Applicant spent the weekend helping the exchange student with the car repairs and insurance. They bonded and Applicant started to date the Russian exchange student. They began spending a lot of time together and she moved into Applicant's house in February 2005. (Tr at 39-40, 164-165.)

In May 2005, Applicant's girlfriend (the exchange student) moved back to Russia to complete her college studies. Applicant spent a lot of time calling and e-mailing her and realized that he missed her. In late July 2005, he went to Russia to visit her. He stayed for about three weeks. Applicant does not speak Russian. His girlfriend acted as

an interpreter where they traveled. When Applicant returned from this visit, he researched options how his girlfriend could complete her degree at a local university. He sponsored her move back to the U.S. She arrived in December 2005 and started classes at a local university in January 2006. When she returned, she moved in with Applicant. In October 2007, Applicant proposed. They married in April 2007. Applicant's wife is a U.S. permanent resident. (Tr at 41-43, 48, 165-167, 173, 187; AE A; Gov 2.)

Applicant notified security officers at his full-time employer and at his guard unit when he began to date Applicant. He also informed them when she moved in with him; before he traveled to Russian to visit her; and when he got engaged to her. (Tr at 168; AE A.) Applicant would never sacrifice the security of his country. If a situation arose, he would report it to his security officer. (Tr at 178.) All of Applicant's assets are located in the U.S. (Tr at 174; Gov 2; AE D.)

Applicant's wife's parents are citizens of and reside in Russia. Specifically, they reside in a region known as Bashkortostan, located near the Ural mountains. The town of Melusz, where her parents reside and where she grew up, is the equivalent of a county seat with a population of approximately 60,000. It is mostly a farming community but has some industries, specifically, chemical, construction, brick fabrication, and food processing plants. Her father is the chief engineer for the agriculture department in Meleuz county. He assists area farmers in establishing business relationships relating to obtaining oil and fuel for their machinery, finding new farming techniques, and serves as a resource for finding vendors who repair farm machinery. He will retire in March 2009. (Tr at 25-36; Gov 2.) Applicant's mother is retired. She previously owned two book stores. Applicant's wife describes neither parent as being politically active in Russian Federation politics. Her father is not a member of the communist party. Her mother was a member of the communist party when she was younger. Neither speaks English. (Tr at 44, 60.) Applicant's wife also has a sister who currently resides in Moscow. She used to be a police investigator in a town near where they grew up. She now works as an executive assistant for a Chinese automobile dealership. (Tr at 43, 63; Gov 2.)

Applicant's in-laws attended their wedding in the U.S. His wife's sister was in the U.S. completing an internship and attended the wedding as well. (Tr at 43-44.) Applicant has minimal contact with them because of the language barrier. His sister-in-law speaks English so he has occasional contact with her. Applicant's wife sent \$1,000 in July 2007 to her sister when she moved to Moscow. She also sent her \$750 in September 2007. She sends about \$500 to her parents at Christmas time. She calls her parents a couple of times a week and communicates with her mother via e-mail about once a week. She contacts her sister about once a week. (Tr at 46; 57-58.) In May 2008, Applicant's wife traveled to Russia to visit her family. Applicant did not go with her because of the security clearance issue. (Tr at 62-63, 198.) Applicant anticipates they will travel to Russia to visit his wife's parents in the future out of familial obligation. (Tr at 199.)

A professor emeritus of Russian Language and Culture at a local university testified that Bashkortostan is a remote place in Russia. It is a mixed industrial and agricultural area. It operates under the constitution of its own republic with assistance from Moscow. (Tr at 70- 76, 87.)

The Facility Security Officer (FSO) at Applicant's company testified that she has worked with Applicant for nine years. He has held a SECRET clearance for the past nine years with no security violations. Applicant self-reported when he began dating his girlfriend (now wife). He self-reported when his girlfriend moved in with him. He self-reported when he traveled to Russia to visit his girlfriend. He self-reported when he sponsored his girlfriend to come to the U.S. to attend school. He self-reported his intent to marry his girlfriend. The FSO has never observed signs which would indicate Applicant is a security risk. (Tr at 100-112; AE A.) The Vice President of Human Resources has known Applicant since he joined the company in 1999. Applicant has progressed in his career working his way up to program manager. Applicant is responsible and honest. She currently interacts with Applicant about once or twice a week. She does not believe Applicant is a security risk. (Tr at 124-133.)

The Chief of the Joint Staff, Joint Headquarters of the state National Guard, a Brigadier General, has known Applicant for a number of years. He has been his direct supervisor for the past six years. Applicant is a great asset to Headquarters staff, earning the respect of senior leadership in both the Army National Guard and the Air National Guard. Applicant is consistently a top performer on his staff. He supports his request to have a security clearance. (AE E.) The Director of Staff, Air National Guard, a Colonel, has known Applicant since 1998. He has worked with him closely since January 2004. He indicates that Applicant has volunteered to serve overseas in harms way on numerous occasions. Applicant recently volunteered to deploy to Iraq with his former squadron next summer even though he is no longer assigned to the unit. As a commander, the Director of Staff, has had to assess security risks of the personnel he supervises. He trusts Applicant implicitly and would not hesitate to assign him to duties related to national security. (Tr at 144-153.)

A Master Sergeant assigned to the same unit as Applicant also attests to Applicant's trustworthiness and responsible handling of classified information. (Tr at 134-143.) Applicant's friend who introduced Applicant to his future wife testified. He is also Applicant's financial advisor. Applicant's wife currently works as the office manager for his company. (Tr at 113-122.)

Applicant's performance reports from his civilian employer indicates that he exceeds expectations. (AE F.) His officer performance reports covering the periods from August 1999 to November 2007 have been outstanding. (AE G.)

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.

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.

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.

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

Analysis

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 guideline notes several disqualifying conditions that could raise security concerns. Foreign Influence Disqualifying Conditions (FI DC) apply to Applicant's case because his wife is a Russian citizen and her parents and sister are Russian citizens residing in Russia. Specifically, FI DC ¶ 7(a) (*contact with a 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*); FI DC ¶ 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*); and FI DC ¶ 7(c) (*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*) apply. Applicant's wife's ties to Russia and the possible effect they may have on Applicant's conduct are relevant considerations under this guideline. (ISCR Case No. 01-02452 at 8 (App. Bd. Nov, 21, 2002)) There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. (ISCR Case No. 01-03120 at 8 (App. Bd. Feb. 20, 2002))

The guideline also includes conditions that could mitigate security concerns arising from Foreign Influence. I find the following Foreign Influence Mitigating Condition (FI MC) applies to Applicant's case.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) applies. While Applicant's in-laws are citizens of and reside in Russia, his deep and longstanding relationships and loyalties in the U.S. support the premise that Applicant will resolve any conflict of interest in favor of the U.S. interests. Applicant was born and raised in the U.S. He grew up in a military family. He has possessed a security clearance and worked in the defense industry for over 19 years without a security incident. He has honorably served as an officer in the Air National Guard since 1991. In 2004, he deployed to Iraq for six months and recently volunteered to deploy to Iraq again next summer. His superiors, co-workers, and friends all attest to his

trustworthiness. Applicant's deep and longstanding relationships and loyalties in the U.S. indicate Applicant can be expected to resolve any conflict of interest in favor of U.S. interests. FI MC ¶ 8(b) applies.

Applicant mitigated the security concerns raised under foreign influence.

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 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. I considered the totality of Applicant's family ties to his in-laws in Russia, a country that has interests that are occasionally adverse to the U.S. and is known to conduct espionage activities against the U.S. I also considered that Applicant is a highly regarded employee with a defense contractor. I considered the favorable recommendations of Applicant's superior officers in the National Guard, his 17 years of service in the National Guard, including his deployments, and his outstanding officer performance reports. Aside from his in-laws, Applicant's family members are U.S citizens residing in the U.S. All of his assets are located in the U.S. Applicant has held a security clearance for over 19 years with no security violations. His superiors, peers and co-workers comment favorably about his integrity, character, and work ethic. While Applicant's in-laws living in Russia raise a potential security threat, Applicant's significant ties to the U.S. mitigate the security threat.

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 APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |

| | |
|-------------------|---------------|
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f: | 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.

ERIN C. HOGAN
Administrative Judge