



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



In the matter of:)	
)	
-----, -----)	ISCR Case No. 07-17673
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Roger C. Cartwright, Esquire

February 6, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant’s parents-in-law are citizens and residents of Russia. His wife owns investment property in a resort area in southern Russia worth about \$100,000, and has a close relationship with her parents. Foreign influence concerns were not mitigated. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaires for Investigation Processing (e-QIP), on May 24, 2006. On August 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. 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.

Applicant acknowledged receipt of the SOR on August 21, 2008. He answered the SOR in writing (AR) on September 3, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 8, 2008, and the case was assigned to me on that same date. DOHA issued a notice of hearing on October 20, 2008, and I convened the hearing as scheduled on November 7, 2008. Without objection, I granted the Government motion to amend the SOR by adding an inadvertently omitted paragraph identifying and describing Guideline B. The Government offered exhibits (GE) 1 through 3, which were admitted without objection. The Government also offered HE II, comprising a request that I take administrative notice of certain facts concerning the Russian Federation and nine Government documents supporting the veracity of those facts. Applicant had no objection, and administrative notice was taken of these facts. Applicant testified on his own behalf, and submitted exhibit (AE) A, which was admitted without objection. I granted Applicant's request to leave the record open until November 21, 2008, to permit his submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on November 17, 2008. On November 18, 2008, Applicant submitted AE B, which was forwarded by Department Counsel without objection on December 2, 2008. It was admitted into evidence, and the record closed on that date.

Findings of Fact

In his Answer to the SOR, Applicant admitted some of the factual allegations and denied others with explanations. Applicant's admissions, including those contained in his response to DOHA Interrogatories (GE 2 and 3), are incorporated in the following findings.

Applicant is a 43-year-old technician employed by a defense contractor. He has worked for his present employer for almost three years. He served in the Army for just under nine years, and took early separation as part of a draw-down program in 1994. His two other jobs since leaving the Army have also been with defense contractors providing maintenance support for military equipment. He has never held a final security clearance. He briefly held an interim clearance during the first few months of his first post-service job, but was then promoted to a position that did not require a clearance. He was also granted an interim clearance in connection with his current employment. (GE 1; AE A at 16; Tr. at 60-66.)

Applicant's first job after leaving the Army was in a Middle Eastern country. He had recently divorced his first wife. After about a year, he met his current wife. She had been born and raised in Moscow, Russia, and went to the Middle East in 1994 to work as a secretary after finishing college with a degree in history. They married in June 1996. They moved back to the United States in connection with a job change in 1999. They have one son, born in 2003. Applicant's wife became a naturalized U.S. citizen in February 2005, and renounced her Russian citizenship in the process. She now works as a social worker. Both of them testified persuasively concerning their appreciation of, and loyalty to the United States.

Applicant's father-in-law worked as the head of the Building Maintenance Department at a Russian state university from 1984 to January 2005, when he was promoted to Chief Engineer for the university. In that capacity, he is responsible for the Building Maintenance Department, as well as construction and utilization of new campus facilities, ongoing repair and renovation of all buildings and utility systems, and fire safety. (AE A at 13.) His mother-in-law retired from her position as a science teacher at a Russian college some 17 years ago, and has been a home-maker since then. (GE 3 at 3; Tr. at 38, 53.)

Applicant speaks virtually no Russian, and his wife's parents speak very little English, so they communicate through her. He met his father-in-law during two 14-day visits to Russia, in 1997 and 1998, and when his father-in-law visited them in the United States, most recently for 10 days in 2006. He met his mother-in-law when she came to the U.S. for a second wedding ceremony held here in December 1996 at Applicant's mother's request. He also saw her during the Russia visits, and her four visits to their home in the U.S. since 2000. The most recent of these visits lasted 30 days in September 2005. Applicant's wife speaks with her parents by telephone several times per month. She last visited them in Russia during summer 2006. (GE 2 at 8; GE 3 at 3; Tr. at 36, 39-40, 66-68, 77.)

Applicant's wife and her parents decided to buy some undeveloped resort-area land in southern Russia near the Black Sea in 2005. They anticipated developing a hotel or bed and breakfast on the land at some future time as a place for her parents to operate when her father retires. She and her parents each invested half of the approximately \$100,000 purchase price for the land. Her \$50,000 contribution came from cashing in her 401(k) savings and some of the stock she purchased in the company that formerly employed her. In order to avoid unfavorable inheritance and tax consequences, the land is titled solely in Applicant's wife's name. Other than supporting his wife's decision, Applicant was not actively involved in this transaction, but he and his wife live in a community property state. Applicant's wife testified that development plans are not being actively pursued at present due to her mother's deteriorating health, and may be canceled with the property sold to finance her parents' retirement. She is her parents' only child. (GE 2 at 9; GE 3 at 3, 6; Tr. at 40-42, 47-50, 69-71, 95-97.)

Applicant and his wife submitted earning statements showing that his gross earnings for 2008 were about \$60,500, and hers were about \$51,000. They submitted a sworn statement estimating the value of their assets in the U.S. as well, subject to recent market fluctuations and reductions. They have a principal residence valued at \$345,950 and a rental home valued at \$255,950, for a total of \$601,900 in real estate. Their other retirement, investment, and personal property assets were estimated to total \$79,000. No information was provided concerning their mortgage balances, any equity loans, or other debts against which to calculate their net worth. (AE B.)

Applicant submitted letters, certificates, and performance evaluations from his current and former employers and co-workers attesting to his excellent work performance, reliability, dedication and integrity. (AE A at 1-4, 6-8, 11-12, 15, 17-21.) He

was awarded an Army Commendation Medal, two Army Achievement Medals, and two Good Conduct Medals during his active duty service, which ended with an Honorable Discharge. (AE A at 16, 22-27.) His wife's supervisor considers her to be an honest and caring person, who is calm, objective, and conscientious about her work. (AE A at 5.) The wife of Applicant's long-time close friend and former co-worker also speaks Russian, and has known Applicant's father-in-law for more than 13 years. She speaks with him during his visits to the U.S., and found him to be trustworthy, hardworking and considerate. (AE A at 9; Tr. at 77.) Another Russian-speaking couple who are family friends of Applicant and his wife have met his father-in-law both during his U.S. visits and during their visits to Russia. They wrote that he is a nice and modest person, with a low key demeanor and quiet manner. He told them that he is very proud of his daughter becoming a U.S. citizen, and happy that she is living and raising her family in this country. (AE A at 10; Tr. at 77.)

I took administrative notice of the facts set forth in HE II concerning the Russian Federation. That country is a very large nuclear superpower that has continued to develop economically, socially and politically since the dissolution of the Soviet Union. Recent events that have escalated tensions between Russia and the U.S. include the incursion into internationally recognized sovereign Georgia territory by the Russian army, threats against Poland, suspicious poisonings and killings of journalists and other persons considered to be undesirable, and manipulation of energy resources to pressure NATO allies and other U.S.-friendly countries. Russia has an active, recent, and ongoing intelligence collection program targeting the U.S. As of 2005, Russia and China were the most aggressive collectors of sensitive and protected U.S. technology and accounted for the majority of such targeting. Russia has been a leader in industrial espionage against the U.S. since at least 1997, with no indication of abatement. Russia also practices substantial intelligence collection and espionage against the U.S., and shares various technologies of security concern with other countries whose interests are contrary to those of the United States. Russian officials reportedly engage in human rights abuses, including abductions, torture, coerced confessions, and unlawful surveillance of citizens and visitors. (HE II.)

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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant 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.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Department Counsel argued that the evidence in this case established one of them: ¶ 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.” (Tr. at 101.) Although not directly asserted by Department Counsel, disqualifying conditions ¶ 7(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;” and ¶ 7(e), “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned business, which could subject the individual to heightened risk of foreign influence or exploitation;” were clearly raised by the evidence and discussed by both counsel.

Russia is a country of significant concern for information security and espionage against the U.S., so connections there are more likely to generate heightened risk of exploitation, inducement, manipulation, pressure or coercion than most other countries. Applicant has a close and loving relationship with his wife, and through her has entirely legitimate, serious interest in the welfare of her parents who are citizens and residents of Russia. Their visits to Russia to visit these family members, her parents’ multiple visits to the U.S., and her multiple monthly telephone contacts demonstrate the importance of their family relationship. Applicant’s wife invested \$50,000 in a joint venture with them to purchase undeveloped resort property in Russia worth \$100,000, and this property is titled only in her name. Although insufficient evidence was supplied to determine what percentage of their net worth this investment represents, it equals almost a full year of gross earnings for both of them. Accordingly I conclude that it represents a substantial property interest. These facts meet the Government’s burden of production by raising all three of the aforementioned disqualifying conditions. These contacts, relationships, and property interest shift a heavy burden to Applicant to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (c), and (e) security concerns are:

(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.;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's wife's relationships with her family in Russia are close and important to her, and his relationship with her makes him susceptible to pressure and exploitation. It is not necessary that such pressure or exploitation be shown to have occurred to establish these concerns. Her father holds an important position responsible for all building and utility matters at a Russian state university, a government entity. Applicant did not establish that either his fully appropriate family relationships or his in-laws' position and activities in Russia make the risk of exploitation or pressure unlikely. Their contact, particularly with his wife, is frequent and their relationship is close. The direct and substantial investment in the resort property, held solely in his wife's name, and her position as the sole heiress of her parents' other property, preclude a conclusion that such property interests could not be used to exert effective influence, pressure, or manipulation.

Given the nature of the Russian government and Applicant's family's ongoing presence and property holdings there, the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion remains a concern. Applicant failed to establish the mitigating conditions set forth in AG ¶¶ 8 (a), (c), or (f), because his relationship with his wife and, through her, to her family is not one that supports a conclusion that such risk of exploitation is unlikely.

One Guideline B mitigating condition was established to some degree by Applicant, but it is framed to provide mitigation for a disqualifying condition that was not asserted by the Government. This mitigating condition is AG ¶ 8(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.

This mitigating condition addresses security concerns under AG¶ 7(b), that Applicant's foreign connections could create a potential conflict of interest between his obligation to protect information and his desire to help the foreign people or entity by providing the information. Applicant's deep and longstanding loyalty to the U.S. is unquestioned. However, this mitigating condition does not squarely address the ¶¶ 7 (a), (c), and (e) security concerns arising from heightened risk of foreign pressure, manipulation or exploitation from the contacts, relationships, and property of concern. Accordingly, the mitigating effect under this condition is insufficient to overcome those security concerns raised by the undisputed facts in this case.

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 established by the record evidence. 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) the 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. Applicant's conduct of security concern does not involve any personal misconduct, dishonesty or disloyal activity. While other factors including his excellent work record, character and loyalty have been duly considered, the primary whole-person issue that is of concern under these circumstances is his marriage to a former Russian citizen with Russian citizen/resident parents. This raises, "(8) the potential for pressure, coercion, exploitation, or duress;" and "(9) the likelihood of continuation or recurrence."

Applicant has not sufficiently met his burden to mitigate the resultant security concerns. His close family ties, through his wife, to people who currently reside in and are citizens of the Russia create an ongoing potential for pressure, coercion, exploitation or duress, and the likelihood of continuation in the medium-term and long-term future is established by the evidence of record. As long as his wife's family still lives there, and she owns the resort property, he may well visit there again and be personally subject to the actions of the Russian government as well.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence considerations.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge