



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



In the matter of:)	
)	
		ADP Case No. 08-03884
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

July 24, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C31) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted her Questionnaires for Public Trust Position (SF 85P), on July 30, 2007. On March 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guidelines B and C regarding 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), 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 March 9, 2009. She answered the SOR in writing on March 19, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on April 13, 2009. I received the case assignment on May 4, 2009. DOHA issued a notice of hearing on May 6, 2009, and I convened the hearing as scheduled on May 28, 2009. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified on her own behalf and submitted Applicant's Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on June 2, 2009. I granted Applicant's request to keep the record open until June 11, 2009, to submit additional matters. On or about June 8, 2009, she submitted Exhibit B, which was received without objection. The record closed on June 11, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Russia. The request was granted. The request, and the attached documents, were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, dated March 19, 2009, Applicant admitted all of the factual allegations. She also provided additional information to support her request for eligibility for a public trust position.

The Applicant was born in Russia, but "left at age 32, in 1998" (TR at page 24 lines 10~17). She came to the U.S. on a fiancée visa (TR at page 24 line 18 to page 28 line 5). She has since divorced her American spouse; but has two children, one from a previous marriage, born in Russia, and the other born in the U.S. (*Id*). She attended college in the U.S., and was naturalized in November of 2006 (TR at page 25 line 1 to page 26 line 20).

The Applicant owns a condo in the U.S. worth about \$375,000 (TR at page 48 line 5 to page 49 line 11, and AppX B at Encl 5). Her net worth in the U.S. is about \$100,000 (*Id*). She has no assets in Russia, and stands to inherit nothing in Russia (TR at page 49 lines 3~11).

She summarizes her feelings about the U.S. in the following terms:

Your Honor, my country is [the] United States. I have everything here -- my life, my children. My daughter is get[ting] an education here. We don't have nothing(*sic*) in Russia. And my son even doesn't know

[the] Russian language at all. So I have all my life, all my financial interest in this country, and I don't have anything to do with Russia anymore (TR at page 51 lines 8~14).

Guideline B - Foreign Influence

1.a., 1.d. and 2.b. The Applicant's parents are citizens and residents of Russia (GX 1 at pages 4~5). Her 69 year old mother is retired from the railroad, from which she receives a small government pension (TR at page 33 line 11 to page 35 line 22). Her mother never worked for the Russian/Soviet military, and she was never a member of the Communist Party (*Id*). The Applicant's 70 year old father is also retired from the railroad, with a small government pension (TR at page 35 line 23 to page 38 line 9). He served two years in the Soviet Army, about 50 years ago, but was never a member of the Communist Party (*Id*). The Applicant speaks to her parents about two to three times a month (TR at page 35 lines 2~7).

The Appellant visited her parents in Russia in 2003, 2005 and, most recently, in 2008, in order for her children to see their grandparents (TR at page 43 line 16 to page 45 line 24, and at page 47 line 3 to page 48 line 4). Each time she used her Russian passport to enter and exit Russia (*Id*).

1.d. The Applicant's brother is also a citizen of and resides in Russia (TR at page 38 line 10 to page 40 line 15). He is 37 years of age, and owns a small business (*Id*). He served a year and a half in the Russian Army, but was never a member of the Communist Party (TR at page 38 line 10 to page 40 line 15). The Applicant has contact with her brother about once every two months (TR at page 39 lines 7~9).

1.e. The Applicant has a 32 year old girl friend who is a citizen of and resides in Russia (TR at page 40 line 16 to page 43 line 15). She works in a private bank, and was never a member of the Communist Party (*Id*). The Applicant contacts her girl friend about three to four times a year (TR at page 40 lines 16~21).

The Applicant is not subject to coercion vis-a-vis her Russian relatives or her Russian girl friend (TR at page 50 lines 8~24). None of Applicant's Russian relatives or her girl friend know that she has applied for a position of public trust.

Guideline C - Foreign Preference

2.a. and 2.b. The Applicant was re-issued a Russian passport in July of 2005 (TR at page 28 line 6 to page 29 line 12). As she was not a naturalized U.S. citizen until November of 2006, she had to use her Russian passport to enter and exit Russia in 2003 and 2005 (*Id*). Although she used her Russian passport to enter and exit Russia in 2008, she does not consider herself to be a Russian citizen anymore; and as such, is willing to renounce her Russian citizenship (TR at page 33 lines 3~10). As evidence of her stated intention, she has destroyed her Russian passport (AppX B at Encl 2). A photo copy of her destroyed Russian passport has been admitted into the record (*Id*).

I take administrative notice of the following facts: Russia is a federation composed of 21 republics. The Government consists of a strong president, a prime minister, a bicameral legislature, and a weak judiciary. Recently, tensions between the U.S. and Russia have escalated when Russia sent its army across an internationally recognized boundary, to attempt to change by force the borders of Georgia, a country with a democratically elected government. Russia also has an active, recent, and ongoing collection program that targets the U.S. Beyond collection activities and espionage directed at the U.S., Russia provides certain technologies to other countries, such as China, Venezuela and Iran, in exchange for both money and diplomatic influence.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.). “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security” (See Regulation ¶ C6.1.1.1.). The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made (See Regulation ¶ C8.2.1.).

When evaluating an Applicant’s suitability for a public trust position, the Administrative Judge must consider the disqualifying and mitigating conditions in the AG. 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 [sensitive] 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 trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 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

Guideline B - Foreign Influence

Paragraph 6 of the new adjudicative guidelines sets out the security concern relating to Foreign Influence: “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.”

Here, Paragraphs 7(a) and 7(b) are applicable: “*contacts 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;*” and “*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.*” The Applicant’s parents, brother and a girl friend are citizens and residents of Russia. These are countered, however, by the first two mitigating conditions, as “*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.;*” and “*there is no conflict of interest [as] the individual has such deep and long lasting 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.*” The Applicant has clearly demonstrated that her new life as an American citizen is in the U.S. with her family and possessions, and that, for the most part, she has cut her connections with Russia. Furthermore, the Applicant averred credibly that she could not be coerced by the presence of her parents, brother and girl friend in Russia by the Russian government.

Guideline C - Foreign Preference

Paragraph 9 of the new adjudicative guidelines sets out the security concern relating to Foreign Preference: “When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Here, Paragraph 10(a)(1) is applicable. “*exercise of any right, privilege or obligation of a foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; . . .*” This is clearly countered, however, by the mitigating conditions noted in Paragraphs 11(b) and 11(e). Under 11(b), the Applicant “*expressed a [sincere] willingness to renounce dual citizenship;*” and under 11(e), the Applicant’s Russian “*passport has been destroyed . . .*”

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a public trust position 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Her Manager, avers, in part, the following:

Over the last 10-months as . . . [the Applicant’s] direct supervisor I have come to know her to be a very dependable, trustworthy, hard working member of our close knit team. She plays a vital role in our organization of tracking and maintaining the current status of 100’s of contracts, a role that requires a great deal of attention and focus. . . . [the Applicant] has stepped into this role taking an active lead in protecting the company from risk (AppX A the last page).

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from her alleged Foreign Influence and Foreign Preference.

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
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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 public trust position. Eligibility for access to sensitive information is granted.

Richard A. Cefola
Administrative Judge