



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



In the matter of:

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ISCR Case No. 08-04865

Applicant for Security Clearance

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

History of Case

On December 14, 2007, Applicant submitted a Questionnaire for National Security Positions (SF-86). On September 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B and Guideline C. 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 answered the SOR in writing on December 26, 2008, and waived her right to a hearing before an administrative judge. On January 28, 2009, Department Counsel prepared a File of Relevant Material (FORM), containing six Items, and mailed Applicant a complete copy the following day. Applicant received the FORM on February 6, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted additional information to which Department Counsel had no objections. On May 7, 2009, DOHA assigned the case to another administrative judge and re-assigned it to me on May 15, 2009. I marked Applicant's documents as Applicant's Exhibits (AE) A through D and admitted them into the record.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Within the FORM, Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Russia. Attached to the FORM are documents marked as Items I through X. Applicant did not object to my consideration of those exhibits, as relating to Russia. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out under the heading "The Russian Federation."

Findings of Fact

In her Answer to the SOR, Applicant admitted all factual allegations contained under Paragraphs 1 and 2 of the SOR.

Applicant is 41 years old. She was born and raised in Russia. In 1989, she earned a degree from a Russian university in transportation engineering. In 1993, she immigrated to the United States. In December of that year, she married her husband, a U.S. citizen. They have two children, born in the United States. In September 1998, she became a naturalized U.S. citizen. She attended a technical college in the United States from September 1999 to May 2005, and earned a degree in computer programming. In December 2007, she started her current position as an engineer with a defense contractor. (Item 4)

Applicant's elderly parents were born in Russia and reside there. In October 2008, Applicant filed Immigration Petition for Relative documents for both of her parents, seeking to bring them permanently to the United States. Their petitions were recently approved. (AE B, C and D) According to her April 27, 2009 letter, Applicant's parents are in the process of selling their apartment in anticipation of moving to the United States. They are awaiting a scheduled interview at the U.S. Embassy in Moscow and a medical examination. She thinks they will arrive here in late summer. (AE A) Applicant has one sibling who was born in Russia and resides in the United States. She became a naturalized citizen in March 2009. (AE D)

In 2001, Applicant decided to return to Russia for a visit and applied for a Russian visa. The Russian government denied her request because she was born in Russia. Because the government makes it very difficult and expensive for Russian natives to travel to Russia on any passport other than a Russian one, she renewed her Russian passport in 2001. She subsequently renewed it in May 2006. It expires in May 2011. Since leaving Russia in 1993, Applicant returned in December 2001, January 2002 and October 2008 to see her parents. On each visit, she used a Russian passport that makes travel there more convenient. As soon as her parents arrive in the United States, she will destroy her Russian passport as she will no longer need it. She has not renounced her Russian citizenship to-date. (AE D; Item 6 at 9)

Applicant wrote that "I consider myself an American citizen and have no ties to Russia such as financial, business or government interests. My only connection is through my elderly parents." (Item 6 at 9) There is no derogatory information concerning Applicant's police or financial records. She has never been fired from a job. She has no police record, has never used illegal drugs, or been involved in an alcohol-related incident. (Item 4)

The Russian Federation

The Russian Federation is a diverse and vast country. It is 1.8 times the size of the United States with a population of 142 million people. With the dissolution of the Soviet Union on August 24, 1991, the Russian Federation came into being as the successor nation, in part, to the Russian majority portions of the former Soviet Union. (Item I) The 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 United States include the Russian 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, particularly former components of the Soviet Union, to bend them to Russian policies and national interests. Russia has an active, recent, and ongoing intelligence collection program targeting the United States. 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 United States since at least 1997, with no indication of abatement. Russian continues the espionage conducted by the former Soviet Union. Russia 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. (Item 2 V, VII and IX)

The U.S. State Department succinctly describes the relationship between the United States and the Russian Federation as follows:

The United States and Russia share common interests on a broad range of issues, including counterterrorism and the drastic reduction of our strategic arsenals. Russia shares our basic goal of stemming the proliferation of weapons of mass destruction and the means to deliver them. The Cooperative Threat Reduction (CTR) program, launched in 1992 to facilitate dismantlement of weapons of mass destruction in the former Soviet Union, was renewed in 2006 until 2013. At the 2006 G8 Summit in St. Petersburg, the U.S. and Russia announced the Global Initiative to Combat Nuclear Terrorism to keep terrorists from acquiring nuclear materials. The United States is working with Russia to bring Iran's nuclear programs into compliance with International Atomic Energy Agency (IAEA) rules and United Nations Security Council Resolutions 1737, 1747, and 1803. Regarding North Korea and its development of nuclear weapons and missile delivery systems, Russia is a participant in the Six-Party Talks aimed at the verifiable denuclearization of the Korean Peninsula. Russia also takes part in the Middle East Peace Process "Quartet" (along with the UN and the EU). Russia now interacts with NATO members as an equal through the NATO-Russian Council but without veto power over NATO decisions. During the past several years, Russia has intensified its efforts to combat trafficking in persons. The United States and Russia are cooperating in the fight against HIV/AIDS. (Item I)

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 and 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

[W]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, and then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes a condition that could raise a security concern and be disqualifying in this case:

(a) exercise of any right, privilege or obligation of 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.

Applicant exercised dual citizenship three times when she chose to use her Russian passport to travel to Russia after becoming a U.S. citizen. Those facts are sufficient to raise a disqualification under AG ¶ 10(a)(1).

After the Government raised a disqualification, the burden shifted to Applicant to produce evidence and prove mitigation. AG ¶ 11 provides six conditions that could

potentially mitigate security concerns raised under this guideline, two of which may be applicable:

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant has not renounced or expressed a willingness to renounce her Russian citizenship at this time, which is necessary to trigger the application of AG ¶ 11(b). Nor is she ready to surrender her Russian passport until her parents permanently move to the United States. Hence, AG ¶ 11(e) is not applicable.

Guideline B, Foreign Influence

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.

AG ¶ 7 describes a condition that could raise a security concern and may be disqualifying in this case:

(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.¹

Applicant remains in communication with elderly parents, who are resident citizens of Russia, a country of significant concern for information security and

¹ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

espionage against the United States. Since 1993, she has made three visits to Russia to see her elderly parents and has applied for their permanent resident status here, demonstrating the importance of this family relationship. Those connections are more likely to generate a heightened risk of exploitation, pressure or coercion than most other countries. These facts meet the Government's burden of production by raising the aforementioned disqualifying condition. These contacts and relationships shift the burden to Applicant to prove mitigation.

Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions:

(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.;

(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; and

(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.

Given the nature of the Russian government and Applicant's parent's ongoing presence there, a heightened risk of foreign exploitation, inducement, or coercion remains a concern. Hence, AG ¶ 8(a) does not apply. Applicant's contacts with her parents are more than casual given her attempt to sponsor their immigration to the United States, such that AG ¶ 8(c) is not applicable.

Applicant established the application of AG ¶ 8(b). Based on her relationship with the United States, she can be expected to resolve any conflict of interest in favor of the U.S. interest. She has lived in the United States since arriving in 1993. Her husband and children are U.S. resident citizens. She has attended a U. S. college. She has a good position in the United States. Her sister is a naturalized U.S. citizen, residing here. She is attempting to bring her parents to the United States to live. She considers herself an American and not a Russian. She does not have any financial or business connections with Russia.

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 (APF) 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.

In cases involving foreign influence, the Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). In that same decision, the Appeal Board commended the whole person analysis in ISCR Case No. 03-02878 at 3 (App. Bd. June 7, 2006), which provides:

Applicant has been in the U.S. for twenty years and a naturalized citizen for seven. Her husband is also a naturalized citizen, and her children are U.S. citizens by birth. Her ties to these family members are stronger than her ties to family members in Taiwan. She has significant financial interest in the U.S. and none in Taiwan. She testified credibly that she takes her loyalty to the U.S. very seriously and would defend the interest of the U.S. Her supervisors and co-workers assess her as very loyal and trustworthy.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. There are several countervailing, positive attributes to Applicant's life as a U.S. citizen that weigh in favor of granting Applicant a security clearance. She is a mature person, who has lived in the United States for 15 years, and became a U.S. naturalized citizen in September 1998 when she swore allegiance to the United States. Her husband and children are U.S. citizens. There is no evidence that she has ever taken any action that could cause potential harm to the United States. She has worked for a defense contractor for over a year. She asserted her pride of American citizenship. Because her immediate family members live in the United States, they are not vulnerable to coercion or exploitation by a foreign power. The realistic possibility of pressure, coercion, exploitation or duress being placed on her elderly parents as they immigrate to the United States is low.

Five circumstances weigh against Applicant in the whole person analysis. First, Russia's government is a rival of the United States and in some instances has not conformed to widely accepted norms of human rights. More importantly for security purposes, Russia is actively involved in espionage against the United States, and may attempt to use émigrés such as Applicant for espionage. Second, Applicant had numerous connections to Russia before coming to the United States in 1993. Following her birth, she spent her formative years there. She was educated at a Russian university. Third, her parents are resident citizens of Russia. Fourth, she maintains contact with them, especially while attempting to finalize their immigration plans. Fifth, she has refused to surrender her Russian passport or renounce her Russian citizenship until her parents move here, despite learning of the Government's concern in September 2008.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence, but not those related to foreign preference, as she continues to hold a Russian passport. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance.

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 C:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant

Conclusion

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

SHARI DAM
Administrative Judge