



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



In the matter of: )  
)  
) ISCR Case No.08-05046  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro Se*

February 10, 2009

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**Decision**

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DAM, Shari, Administrative Judge:

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

**History of Case**

On August 13, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). 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 October 20, 2008, and waived his right to a hearing before an administrative judge; however, Department Counsel exercised its right to have a hearing and on November 28, 2008, DOHA assigned the case to another administrative judge. On December 5, 2008, the case was re-assigned to me. DOHA issued a Notice of Hearing on December 16, 2008, and I convened the hearing as scheduled on January 15, 2009. The Government offered exhibits (GE) 1 through 3, which were received into the record without objection. Applicant testified. The record remained open until January 30, 2009, to give Applicant an opportunity to submit documents. On January 28, 2009, he submitted three exhibits that I marked as (AE) A through C, and admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on January 26, 2009.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Russia. (Tr. 13-14) The request and the attached documents are included in the record as Hearing Exhibits (HE) 1 through 9. 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 his Answer to the SOR, dated October 20, 2008, Applicant admitted all factual allegations contained under Paragraphs 1 and 2 of the SOR.

Applicant is 52 years old. He was born and raised in a large city in Russia. He attended high school and college there. In February 1978, he married his wife, a Russian citizen resident. The following February, he earned a Master of Science in Electrical Engineering and Computer Science. He and his wife have two sons, ages 25 and 29, both born in Russia. His wife holds an advanced degree in computer science that she earned from a Russian university.

In 1991, Applicant and his wife applied for visas to come to the United States. (Tr. 21) In July 1996, they, along with their two children, immigrated to the United States as Jewish refugees. (Tr. 40-41) In March 2005, he became a naturalized U.S. citizen. His two children became naturalized U. S. citizens in 2003. His wife, a resident alien, applied for citizenship, but has not yet received it. (Tr. 27) All of his immediate family members live in the United States and are "Americanized." (Tr. 41) One of his sons is pursuing a degree in computer science at a prestigious U.S. university, and the other recently completed a Master's degree in aviation at another well-know university. He immigrated because the "United States was a country of my dreams, and it was a symbol of freedom. I wanted to live in a country like that all my life." (Tr. 21)

Applicant's parents were born in Russia and resided there until their death in 1993. (Tr. 33) He has an older sister who was born in Russia and resides there along with her son. Prior to her retirement, she worked as a mechanical engineer in private industry. Her son is a construction contractor. Applicant loves his sister and talks or emails her and his nephew once every couple months. (Tr. 35; GE 2) Both of them would like to come to the United States, but find it difficult to obtain a Visa. (Tr. 36) Applicant's mother-in-law and father-in-law are deceased. (GE 1 at 23-24) He has a couple friends that he emails occasionally. (GE 2)

After arriving in the United States, Applicant learned English and worked in low level positions for five years until he was able to improve his skills and obtain a better position. (Tr. 22) In May 2003, he obtained his current position in which he designs and implements computer networks for a federal contractor.

Applicant returned to Russia in March 2000, April-May 2004, and October 2006 for two week vacations to visit his sister. On each visit he used his Russian passport. In March 2005, Applicant renewed that passport, which was issued in March 2006 and is valid until March 2011. He renewed it because it was easier for him to visit Russia with it, rather than his U.S. passport. He did not know that using it after becoming employed by a federal contractor could pose a problem, as he never received any briefings from his employer on the issue. (Tr. 52) He brought it with him to the hearing, ready to surrender it, and did not know he could tender it to his employer. (Tr. 49) On January 23, 2009, he surrendered the passport to his facility security officer and is willing to have it destroyed. (Tr. 49; AE B)

Applicant rents his home and has about \$300,000 in retirement fund. (Tr. 43) He also has U. S. bank accounts. (Tr. 21). He does not own any property in Russia. (Tr. 44) He does not have any retirement benefits there. (Tr. 50) He has not voted in any Russian elections since moving to the United States. (*Id.*) He has developed ties to his local community. (Tr. 44) He voted in the recent U.S. presidential election. He has no plans of ever permanently returning to Russia, nor do his children. (Tr. 46; 59) There is no derogatory information concerning his police or financial records. He has never been fired from a job. He has no police record other than a speeding ticket. He has never used illegal drugs, or been involved in an alcohol-related incident. (GE 1).

Applicant's supervisor submitted a letter of recommendation. He has held a Top Secret clearance for 30 to 40 years. He met Applicant in the spring of 2003 when Applicant began working for their employer. The supervisor is highly complementary of Applicant's work and integrity. Because of his high level of performance, the company requested Applicant seek a security clearance in order to assist the company in its support of several internal classified engineering networks. Throughout his employment, Applicant "has had total access to the entire [company's] network and takes his responsibility for his continued security, expansion and enhancement very seriously." (AE C) The supervisor has no hesitation in recommending Applicant for his clearance, stating that he is loyal employee, trustworthy, conscientious, and responsible. He noted

that Applicant has obtained numerous industry certifications, “But none of these certifications mean more to [Applicant] than achieving his U.S. citizenship.” (*Id.*)

During the hearing, Applicant credibly and sincerely asserted his pride of U.S. citizenship and desire to retain his work with his current employer. In response to a question about what he most likes about the United States, he stated, “I like the freedom and the American way of life. There is no corruption over here. . . You’ll be a loyal person and that’s all you need to do. You don’t need to cheat. You just work hard and everything comes well.” (Tr. 48) He considers himself to be an American and not a Russian. He is willing to renounce his Russian citizenship. (Tr. 51) He does not miss Russia, stating, “I am kind of ashamed of participation of Russia, and I am glad that I am not tied to Russia any more. And that is actually the reason I wanted to move from Russia to the United States because I don’t want to be part of this mess [Sic].” (Tr. 56)

### **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. It achieved independence with the dissolution of the Soviet Union on August 24, 1991. (HE 1) 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 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 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. 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. (HE 2, 5, 7, and 9)

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. We are 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. On North Korea, 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. We are cooperating in the fight against HIV/AIDS. (HE 1)

## **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.

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 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 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 nine conditions that could raise a security concern, two of which 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;<sup>1</sup> and,

(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.

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<sup>1</sup> 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).

In this case, Applicant remains in communication with his older sister and nephew, who are resident citizens of Russia, a country of significant concern for information security and espionage against the United States. He has made three visits to Russia since 2000 to see his sister and nephew and has his frequent contact with them, which demonstrate 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. In addition, his wife, who resides with him, remains a citizen of Russia. These facts meet the Government's burden of production by raising both of the aforementioned disqualifying conditions. 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 family'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 his sister and nephew are more than casual, such that AG ¶ 8(c) is not applicable.

Applicant established application of AG ¶ 8(b). Based on his relationship and depth of loyalty to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the United States since arriving in 1996 as a refugee. His children are naturalized U.S. citizens, residing in the United States. His wife is a resident alien, awaiting citizenship. None of his family has any intention of permanently returning to Russia. He has a very good job and is involved in local community activities. He considers himself an American and not a Russian. He has bank accounts and retirement funds in the United States. In contrast, his Russian interests have become minimal over the years. He does not own property there and has

only two family members living there. He is willing to renounce his Russian citizenship in favor of the United States.

### **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 four conditions that could raise a security concern and may be disqualifying, one of which may be applicable 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;
  - (2) military service or a willingness to bear arms for a foreign country;
  - (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
  - (4) residence in a foreign country to meet citizenship requirements;
  - (5) using foreign citizenship to protect financial or business interests in another country;
  - (6) seeking or holding political office in a foreign country; and,
  - (7) voting in a foreign election;
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;
- (c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,
- (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.



Applicant's admission that he exercised dual citizenship when he chose to use his Russian passport to travel to Russia after becoming a U.S. citizen is sufficient to raise a disqualification under AG ¶ 10(a)(1).

AG ¶ 11 provides six conditions that could 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.

While testifying, Applicant expressed his willingness to renounce his Russian citizenship, which is sufficient to trigger the application of AG ¶ 11(b). Upon learning how to officially surrender his Russian passport to his employer, he immediately did so, warranting the application of AG ¶ 11(e).

### **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. Four 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 1996. Following his birth, he spent his formative years there. He was educated at a Russian university, as was his wife. Third, his sister and nephew remain resident citizens of Russia. Fourth, he has some contact with his sister whom he loves and would like to come to the United States.

There are many other countervailing, positive attributes to Applicant's life as a U.S. citizen that weigh in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 12 years, and became a U.S. naturalized citizen in March 2005 when he swore allegiance to the United States. His spouse has been living in the United States since 1996 and is permanent alien resident, awaiting citizenship. His two children are U.S. naturalized citizen, whom he described as "Americanized." There is no evidence he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and has worked diligently for a defense contractor for several years. His supervisor assesses him as loyal, trustworthy, conscientious, and responsible, giving him an excellent recommendation and commenting on Applicant's pride in being a U.S. citizen. He asserted his pride of American citizenship and his deep disappointment or disdain for Russia and its policies. There is no reason to believe that he would take any action that could cause potential harm to his U.S. family or this country. Because his 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 is low. Based on all of those factors and his credible and sincere testimony, I do not believe he would compromise national security, or otherwise comply with any Russian threats or coercion. No witnesses recommended denial of his security clearance. There is not any derogatory information about him in the record other than a speeding ticket.

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 preference and foreign influence.<sup>2</sup> Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility

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<sup>2</sup> I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶ 8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.

and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial 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:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	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.

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SHARI DAM  
Administrative Judge