



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-08052
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 23, 2009

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on July 12, 2007. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B on April 27, 2009. 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 May 11, 2009. She answered the SOR in writing in May 2009. Department counsel decided to proceed with a hearing

before an administrative judge, and was prepared to proceed on July 21, 2009, and I received the case assignment on September 3, 2009. DOHA issued a notice of hearing on September 25, 2009, and I convened the hearing as scheduled on October 20, 2009. The government offered two exhibits (GE) 1 and 2, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She did not submit any exhibits at the hearing. DOHA received the transcript of the hearing (Tr.) on October 28, 2009. I requested documents from the Applicant and held the record open until November 4, 2009. She timely submitted three exhibits (AE) A through C, without objection. The record closed on November 4, 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 Ukraine. (Tr. 11-12.) The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits I and II. In addition, Hearing Exhibits III and IV are included in the record. The facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute. (Tr. 12.) The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.c of the SOR.<sup>1</sup>

Applicant, who is 48 years old, works as an engineer for a Department of Defense contractor. She began her work with this employer in November 2006.<sup>2</sup>

Applicant was born in the Ukraine when it was part of the Union of Soviet Socialist Republics (the Soviet Union). She graduated from high school and attended college in the Ukraine. She received a bachelor's degree in mechanical engineering. She married her first husband in 1981 in the Ukraine. They had two sons, now ages 27 and 23, who were born in the Ukraine. She and her first husband divorced in 1998 while still living in the Ukraine. Applicant's contact with her first husband is limited to special occasions and matters related to their sons. Her first husband works in private construction, building houses.<sup>3</sup>

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<sup>1</sup>Response to SOR.

<sup>2</sup>GE 1; Tr. 13-14.

<sup>3</sup>GE 1; Tr. 13, 15, 18-19, 28-29, 37.

Applicant worked as a ship designer in the Ukraine ship building industry until 1991. When the Soviet Union collapsed in 1991, her employer laid her off. For the next ten years, she worked in a hospital as an engineer.<sup>4</sup>

Applicant and her first husband purchased an apartment in the Ukraine. Although they are divorced and her first husband has remarried, Applicant still owns a 25% interest in this apartment.<sup>5</sup> Applicant's sons each own a 25% interest in this apartment and her first husband owns the remaining 25%. Applicant estimates the value of the apartment at \$40,000. When the real estate market improves, she would like to sell the apartment.<sup>6</sup>

Applicant met her second husband, an American citizen, in 2000. She immigrated to the United States as a fiancée in 2001. Her two sons immigrated with her in 2001. After arriving in the United States, Applicant married her second husband. She became a United States citizen in 2006. She possesses a passport from the United States, which she uses to travel to the Ukraine. She and her second husband divorced in 2007, but are discussing remarriage.<sup>7</sup>

Applicant's oldest son became a United States citizen on July 20, 2009. He married a Ukrainian citizen, whom he met in the United States, in the Ukraine. His wife recently gave birth to a son in the Ukraine. Applicant's grandson is a citizen of the United States. Her son is currently in the process of completing the necessary paperwork to bring his wife and son to the United States. Applicant's younger son has applied to become a United States citizen and had his citizenship interview on November 10, 2009.<sup>8</sup>

Applicant's parents are citizens of and reside in the Ukraine. Her father, who is 75 years old, served in the Navy of the Soviet Union as a machinist mate, from 1954 until 1957. He worked in the ship building industry as a mechanical engineer for many years. He still works one day a week for a privately owned shipbuilding company. Until 1991, her father's company built warships. Since 1991, the company builds skin for cruise ships, including European companies, under contracts. Her mother, who is 71 years old, is a retired nurse. She receives a retirement benefit from the government. Her

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<sup>4</sup>Tr. 24-25.

<sup>5</sup>Applicant's first husband lives in the apartment with his wife.

<sup>6</sup>Tr. 18-19, 37.

<sup>7</sup>GE 2; Tr. 13-14, 19-20

<sup>8</sup>AE B; AE C; Tr. 13-14, 20-21.

parents are not politically active and are no longer members of the communist party.<sup>9</sup> Applicant is an only child.<sup>10</sup>

Applicant's parents visit her in the United States every other year. She has visited them four times since immigrating to the United States, the last time in 2009, when she attended her son's wedding. Applicant talks with her parents once a week. She would like to bring them to the United States, but is not sure if they will come. Applicant has one cousin in the Ukraine. She visits with her cousin when she is in the Ukraine. She does not have any other close family members. She does not have regular contact with her former co-workers. When she is in the Ukraine, she may pass one of them on the street. They stop and talk briefly. She visits with friends when she is in the Ukraine, but she does not have any additional contact with them.<sup>11</sup>

Applicant has substantial assets in the United States. She lives in a trailer on six acres of land, which she values at \$125,000. She has a \$92,000 mortgage on this property. She has a 401k account worth \$5,000, two Individual Retirement Accounts (IRA) worth about \$4,500, a car, and a savings account worth \$50,000. Her second husband gave her a quit claim deed to the house they owned when married. The value of this house is unknown. She does not owe any money to anyone in the Ukraine and will not receive any benefits from the Ukraine. She voted in the recent elections in the United States. She may inherit her parents apartment, which is valued at \$35,000. She does not anticipate a significant inheritance as her parents are not wealthy.<sup>12</sup>

I take administrative notice of the following facts. The Ukraine is a republic with a mixed presidential and parliamentary system. Since the collapse of the Soviet Union in 1991, the Ukraine has been an independent country, undergoing significant political and economic change. The Ukraine has rich farmlands, a well-developed industrial base, a highly trained labor force, and a good educational system. The Ukraine seeks admission into the North Atlantic Treaty Organization (NATO). To achieve this goal, the Ukraine must modernize its military. The Ukraine has taken the first steps towards this goal. The Ukraine also seeks entry in the World Trade Organization and European Union. The Ukraine tries to maintain a good relationship with Russia, a relationship that is difficult and complex. The Ukrainian government respects the rights of its citizens to free speech, to practice religion, and to free press. There are significant human rights issues with the police when arresting or detaining individuals. There is no evidence that the Ukraine seeks to obtain sensitive or classified information from the United States. The Ukraine has received billions of dollars in aid from the United States to help with its development as a democratic state. The documents provided do not discuss terrorism

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<sup>9</sup>Prior to the collapse of the Soviet Union, her parents were required to be members of the communist party if they wanted to work. This requirement ended in 1991. Tr. 32.

<sup>10</sup>Tr. 16-17, 29, 31-34.

<sup>11</sup>*Id.* 14, 22-24, 36.

<sup>12</sup>*Id.* 37-39.

or acts of terrorism in the Ukraine. There is no evidence that terrorist groups operate in the Ukraine or that the Ukrainian government targets its citizens or citizens of the United States. Overall, the Ukraine and the United States have a good relationship.<sup>13</sup>

## **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 used 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 overarching adjudicative goal is a fair, impartial, and commonsense 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an 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.

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<sup>13</sup>Hearing Exhibits 1 to 4.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **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.

Under the potential disqualifying conditions described in AG ¶ 7, the following conditions 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;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has a son who is a naturalized U.S. citizen and resides in the United States. He second son is a resident of the United States and is actively applying for his United States citizenship. Thus, no security concern is raised by these family members. Applicant’s mother and father are citizens and residents of the Ukraine. Applicant maintains a normal, familial relationship with her mother and father. She talks with them

by telephone about once a week. She visits her parents at least every two years. She returned to the Ukraine for her son's wedding in May 2009. She does not provide financial support to her parents. Her family relationships are not *per se* a reason to deny Applicant a security clearance, but her contacts with family members must be considered in deciding whether to grant Applicant a clearance. The government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between her obligations to protect sensitive information and her desire to help her family members.

In determining if a heightened risk exists, I must look at Applicant's relationship and contacts with family members as well as the activities of the government of the Ukraine and terrorist organizations within the Ukraine. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. The record contains no information which indicates that terrorist organizations are active in the Ukraine. While there is no indication the government of the Ukraine targets its citizens, the human rights record of the Ukrainian police forces is dismal. The information of record fails to show that the Ukrainian government engages in espionage activities in the United States or that it targets United States citizens in the United States or the Ukraine by exploiting, manipulating, pressuring, or coercing them to obtain protected information. As a former nation in the Soviet Union and because the Ukraine continues to foster ties with Russia, Applicant's relationship and contacts with her mother and father in the Ukraine raises a heightened risk of security concerns.

Under the new guidelines, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interests. In determining if Applicant's contacts in the Ukraine cause security concerns, I considered that the Ukraine and the United States have a close relationship and there is no evidence that the Ukrainian government targets United States citizens for protected information. The human rights issues in the Ukraine continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of her family members in the Ukraine. Thus, Applicant's recent trips to the Ukraine and contacts with her family in the Ukraine raise a heightened risk concern under AG ¶¶ 7(a) and (b).

In deciding if Applicant has established mitigation under AG ¶ 8(a), I must consider:

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.;

and under AG ¶ 8(b), I must consider whether Applicant has established:

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. interests.

Applicant's normal relationship with her parents is not a basis to deny her a security clearance; however, her burden of proof on mitigation requires her to establish that she will not be placed in a position of having to choose between her parents and the United States. See ISCR Case No. 07-02485 (App. Bd. May 9, 2008). Her parents have never held a political position. Applicant's parents have not been targeted by the Ukraine and there is little likelihood the Ukrainian government would do so in the future. Her parents have never been imprisoned and there is not any evidence that they have suffered any abuses from the Ukraine government. Her closest family members, her two sons, are residents of the United States. She owns two pieces of property and has significant monetary assets in the United States. She owns a 25% interest in an apartment in the Ukraine. Her interest is valued at \$10,000 and equals about 5% of her total assets. Balancing these factors and the lack of evidence that the Ukrainian government targets U.S. citizens for protected information against the Ukraine's poor human rights record, I find that Applicant would resolve any conflict in favor of the U.S. interests. Her loyalties are to the United States, not the Ukraine. Applicant has mitigated the government's security concerns as to her family contacts specified in the SOR under AG ¶¶ 8(a) and 8(b).

### **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 an applicant's conduct and all relevant 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) 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and



unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated.

The evidence in support of granting a security clearance to Applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born and raised in the Ukraine when it was part of the Soviet Union. When the Soviet Union collapsed, she continued to live and work in the Ukraine with her first husband and their sons. In 2001, after her divorce, she came to the United States as a fiancée with her sons. She married the same year and became a naturalized citizen in 2006. Her older son is now a United States citizen and her younger son is in the process of becoming a citizen. She regularly talks with her parents and visits them in the Ukraine periodically. Her parents do not know she works for a federal contractor. Other than her mother's retirement income, her parents have no contacts with the Ukrainian government. Her parents are not in a position where they are likely to be exploited or pressured by the Ukrainian government. There is little chance Applicant will be placed in a position of having to choose between her parents and the United States. In the event she should be placed in such a position, her strong loyalty to the United States would prevail. Applicant's contacts with her parents in the Ukraine and her minimal financial interest do not raise an unacceptable security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her foreign influence.

### **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

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge