



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



In the matter of:)
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-----) ISCR Case No. 08-09346
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)
Applicant for Security Clearance)

Appearances

For Government: William O’Neill, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

January 24, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern posed by his parents-in-law, both citizens and residents of Russia.

Statement of the Case

On August 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concern under Guideline B, Foreign Influence. 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 9, 2010, admitting all the allegations, and requesting a hearing. DOHA issued a notice of hearing on October 7, 2010,

scheduling it for October 27, 2010. I held the hearing as scheduled. During the hearing, I received three Government exhibits, marked as Government Exhibits (GE) 1 through 3, sixteen Applicant exhibits marked as Applicant Exhibits (AE) A through P, and the testimony of Applicant and a character witness. Also, at the Government's request, I took administrative notice of the adjudicative facts set forth in nine documents, marked as Hearing Exhibit (HE) I through IX. DOHA received the hearing transcript (Tr.) on November 4, 2010.

Findings of Fact

Applicant is a 30-year-old married man with no children. He is a veteran of the United States Marine Corps, where he served from 2000 through 2005. He was honorably discharged.

Applicant was a stellar Marine, earning a Good Conduct Medal in February 2003. (AE I at 4) Also, while in the Marines, he became certified as a novice linguist of the Spanish language, and later, successfully completed a "cryptologic technician interpretive (Spanish) course." (AE I at 7, 14)

Since leaving the Marines, Applicant has worked for a federal law enforcement contractor as a network security engineer. He has been attending college full time since 2005 and currently needs two additional credits to earn a bachelor of science degree in information technology and business management. (Tr. 40, 41)

According to Applicant's supervisor he is an "extremely capable" employee. (Tr. 22) On one occasion, Applicant "proactively pointed out potential security defects in a system implementation that could have seriously compromised sensitive information." (AE C) In 2006, Applicant received two awards for outstanding service. (AE K, L) In March 2007, he earned the Joint Civilian Service Achievement Award for outstanding service to his client in support of Operation Enduring Freedom. (AE I at 1)

Applicant's wife is a 24-year old Russian citizen who has been living in the U.S. for the past four years. (Tr. 31) He met her in July 2006. They got married the following year. Applicant's wife was educated in Russia earning both an undergraduate and a master's degree in economics. (Tr. 53) Currently, she works for an accounting firm. (Tr. 56)

Applicant's wife is living in the U.S. as a non-conditional permanent resident. (Tr. 33) She will be eligible for U.S. citizenship later this year. (Tr. 30)

Applicant's parent-in-laws are dual Russian/Ukrainian citizens who live in Russia. His mother-in-law is an accountant. (Tr. 55) Applicant's father-in-law is a lieutenant colonel in the Russian Federation Army. (Tr. 33) In 2006, he retired after 20 years of service, then was recalled to active duty approximately one year later. (Tr. 34, 47) He intends to retire again at the end of the year. Applicant's father-in-law works in a division

of the Russian Federation Army that is analogous to the U.S. Army Corps of Engineers. (Tr. 47) He is a civil engineer who designs bridges and roads. (Tr. 47)

Applicant's wife communicates with her parents via phone and/or e-mail approximately once per month. (Tr. 44) Because Applicant does not speak Russian, and neither of his parent-in-laws speak English, their communication is limited. (Tr. 33, 47)

Applicant and his spouse typically travel to Russia to visit his parents-in-law approximately once per year around the holidays. (Tr. 34) They have no immediate future plans to return to Russia. This past year, Applicant's mother-in-law travelled to the U.S. to celebrate the Christmas holiday with his family. Neither Applicant's wife nor her parents know anything about his job other than that he works with computers. (Tr. 36, 45)

Applicant's wife's maternal grandparents are citizens and residents of Ukraine. Applicant usually sees them when he visits his Russian in-laws. (Tr. 35) Like his parents-in-law, they do not speak English. (Tr. 35)

Applicant's wife's aunt is a Russian citizen who lives in Italy. Over the years, Applicant has had minimal contact with her. (Answer at 2; Tr. 36)

Both Applicant's father and sister are U.S. Army veterans. When his sister left the military, she was a lieutenant. (Tr. 38)

Applicant earns approximately \$100,000 annually. (Tr. 38, AE M at 2) He owns his home and has approximately \$1,000 in savings. (Tr. 38-39)

Russia has an aggressive, ongoing intelligence collection program targeting the U.S. (HE V at 1) Its espionage focuses on military technology and gas and oil industry expertise. (*Id.* at 2) Over the past few years, Russia's foreign policy objectives have grown increasingly inimical to U.S. interests. (HE III at 24) In June 2010, the U.S. Department of Justice arrested ten alleged Russian spies who had been carrying out long-term deep cover assignments in the U.S. (HE VIII) The following month, all ten defendants pleaded guilty to conspiracy to act as an agent of a foreign government within the U.S., and were immediately expelled. (HE IX)

Although Russia has made some progress in respecting human rights since the breakup of the Soviet Union, significant problems remain. For example, several human rights activists and journalists have been killed under mysterious circumstances over the years. (HE II at 2) The press has, at times, been brutally suppressed. (*Id.* at 29) Russian law requires telephone and cellular companies to grant its Ministry of Internal Affairs and Federal Security Service 24-hour remote access to their client databases. (HE II at 16) Also, these agencies require Internet companies to provide dedicated lines to enable tracking of private e-mail communications. (*Id.*)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, "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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest." (AG ¶ 6) Moreover, "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." (*Id.*)

A "current and accurate assessment of the 'geopolitical situation' and the security/intelligence profile of the [foreign] country vis-a-vis the United States is crucial in Guideline B cases." (ISCR Case No. 07-05686 at 4, footnote 3 (App. Bd. November 12, 2008)) Here, the Government's allegations of a security risk generated by Applicant's wife's grandparents, Ukrainian citizens and residents are unsupported by any record evidence concerning Ukraine. I conclude Applicant's wife's grandparents do not generate

a security risk, and that Applicant's parent-in-law's dual Ukrainian citizenship does not generate a security risk.

Conversely, Russia's history of espionage against the U.S., its increasingly inimical stance toward U.S. strategic objectives, and its history of human rights violations compel me to conclude that Applicant's spouse, aunt, and his parents-in-law generate a security concern under AG ¶ 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion."

Although Applicant's aunt is a Russian citizen, she resides in Italy. He has had minimal contact with her. AG ¶ 8(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," applies to this relationship.

Applicant's spouse lives with him and has a steady job. She has non-conditional permanent U.S. resident immigration status and will be eligible for citizenship later this year. Under these circumstances, the likelihood that Russia would seek to directly pressure Applicant through his wife is minimal. AG ¶ 8(a), "the nature of the relationships with foreign persons . . . [is] 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.," applies.

None of the mitigating conditions applies to Applicant's relationship to his parents-in-law. He contends that their relationship is mitigated by its casual and infrequent nature. However, there is a presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." (ISCR Case No. 01-03120, (App. Bd. Feb. 20, 2002) at 4) Applicant and his in-laws cannot readily communicate because of their language barrier. However, Applicant visits them approximately once per year, and his wife communicates with them approximately once per month. Applicant has not overcome this presumption.

Applicant is an upstanding individual with a distinguished military record and employment history. He has consistently dedicated himself to personal and professional growth, successfully completing training to become a Spanish linguist while in the Marines, and attending college full-time while working over the past five years. Both his father and a sibling have served in the U.S. military.

Conversely, not only are Applicant's parents-in-law resident citizens of Russia, his father-in-law is a lieutenant colonel in the Russian Federation Army. The security significance of this fact creates a burden too high for Applicant to overcome. None of the mitigating conditions apply to Applicant's relationship with his parents-in-law.

Whole-Person Concept

Under the whole-person concept, 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.

I have considered these whole-person factors in my analysis of the disqualifying and mitigating conditions, and they do not warrant a favorable conclusion. Applicant has failed to mitigate the security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
SOR subparagraph 1.a:	For Applicant
SOR subparagraphs 1.b-1.d:	Against Applicant
SOR subparagraphs 1.e-1.f:	For Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge