



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



In the matter of:

ISCR Case No. 08-11253

Applicant for Security Clearance

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel

For Applicant: *Pro Se*

November 18, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Foreign Influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR on May 28, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 24, 2009. DOHA issued a notice of hearing on August 3, 2009, scheduling the hearing

for August 18, 2009. The case was reassigned to me on August 12, 2009. The hearing was convened as scheduled. DOHA received the transcript of the hearing (Tr.) on September 2, 2009.

Procedural and Evidentiary Rulings

Amendment of SOR

On my own motion and without objection from either party, I amended the SOR to reflect the correct spelling of Applicant's name.

Notice

I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Russia. Applicant did not object and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. The facts administratively noticed are set out in the Findings of Fact, below.

Evidence

The government offered Exhibits (GE) 1 through 6. GE 1 through 5 were received without objection. GE 6 was admitted over Applicant's objection. I have considered Applicant's objection in determining the weight accorded to GE 6. Applicant testified on her own behalf and submitted Exhibits (AE) A and B, which were received without objection.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. She was born in Russia, in what was then the Soviet Union. She is seeking a security clearance for the first time. She has worked for her current employer as a Russian linguist since 2007, but has been employed in the same geographic location in similar capacities for other defense contractors since 2000. She has a bachelor's degree from a Russian university and completed post-graduate courses at an American university. She was married to a Russian citizen from 1985 until her divorce in 1993. She married a U.S. citizen in 1994. That marriage ended in divorce in 2004. She is engaged to be married to a U.S. citizen who is a member of the military reserves. She has a 24-year-old daughter from her first marriage and a 15-year-old child from her second marriage.¹

¹ Tr. at 23, 26-27, 30-31, 33-34, 42; GE 1-3.

Applicant met a member of the U.S. military while she was visiting Germany in 1993 or 1994. She married him and moved from Russia to Germany in 1994. Her daughter moved to Germany to live with her, but she only stayed about a month. She did not like living in Germany, and she moved back to Russia to live with her father and Applicant's parents. Applicant's second child was born while she was in Germany. Applicant moved to the U.S. with her second husband and child in about 1997. She became a U.S. citizen in 2000.²

Applicant's parents and daughter are citizens and residents of Russia. Her parents are both in their early 70's. Her father is a retired musician and teacher. He was a member of the Communist Party. He became disillusioned and quit the party in about the late 1990s. Her mother teaches music and English. Applicant's daughter is a student. She is not married.³

Applicant visited her parents and daughter in Russia for about three weeks in 2007. That is her only trip to Russia since she immigrated to the United States. Her younger child has not been to Russia. Her parents visited Applicant and her younger child in the United States in the 1990s, and again in 2000. Her daughter in Russia does not speak English, and she has never traveled to the United States. She plans to visit Applicant in the United States, but they do not have a date for her trip. Applicant contacts her parents by phone about twice a month and periodically by e-mail. She has regular contact with her daughter by e-mail and occasionally by telephone.⁴

Applicant credibly denied that she told an investigator in a 2002 interview that a threat against her family members in Russia could be used to coerce or compromise her.⁵ She stated in response to DOHA interrogatories:

I had not considered it a possibility but if coercion were applied to myself or my family or friends, I would notify proper U.S. officials including my DoD contract project manager and security forces.⁶

Applicant does not own any foreign assets. She owns a house in the United States. She views Russia as the country of her birth and has affection for the Russian people, but her loyalty and allegiance are to the United States.⁷

² Tr. at 24, 27-31; GE 1, 2.

³ Tr. at 24-29; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 28, 32-38; Applicant's response to SOR; GE 1, 2.

⁵ Tr. at 19, 40-41; Applicant's response to SOR.

⁶ GE 3.

⁷ Tr. at 40, 42-43.

Applicant submitted letters from her supervisor and a colleague who is also her friend. The supervisor lauded her superior job performance. The colleague attested to Applicant's character, patriotism, and dedication to the United States.⁸

The Russian Federation

The Russian Federation is composed of 21 republics. The government consists of a strong president, a prime minister, a bicameral legislature and a weak judiciary. It is a vast and diverse country with a population of 142 million people. It achieved independence with the dissolution of the Soviet Union on August 24, 1991. It is a nuclear superpower that continues to develop politically, socially, and economically.

The United States and Russia share certain common strategic interests. Of mutual interest to the United States and Russia are counterterrorism and the reduction of strategic arsenals. Russia and the United States share a common interest in controlling the proliferation of weapons of mass destruction and the means to deliver them. The Cooperative Threat Reduction (CRT) program was launched in 1992 to provide for the dismantlement of weapons of mass destruction in the former Soviet Union. The CRT program was renewed in 2006 for seven years, until 2013.

Since 2003, U.S.-Russian relations have often been strained. Tensions between the United States and Russia increased in August 2008, when Russia sent its army across an internationally recognized boundary in an attempt to change by force the borders of Georgia, a country with a democratically-elected government. Russia's assault on Georgia followed other troubling signs: threats against Poland, including the threat of nuclear attack; suspicious poisonings and killings of journalists and those deemed "undesirable," including the President of Ukraine; the apparent use of energy resources to apply political pressure against Ukraine, Lithuania, and the Czech Republic; and the creation in Russia's state-controlled media of an "enemy image" of the United States.

The Russian Federation's intelligence capability is significant and focuses on collection of information from the United States. Russia has targeted U.S. technologies and has sought to obtain protected information from them through industrial espionage. Russian espionage specializes in military technology and gas and oil industry expertise. As of 2005, Russia and China were the two most aggressive collectors of sensitive and protected U.S. technology and accounted for the majority of such targeting. Russia is a leading arms exporter, with major sales of advanced weapons and military-related technology to China, Iran, Syria, and Venezuela.

The threat of terrorism in Russia continues to be significant. Travel in the vicinity of Chechnya may be dangerous, despite Russian efforts to suppress the terrorists. Acts of terrorism include taking hostages and bombings.

⁸ AE A, B.

Russia has recognized the legitimacy of international human rights standards, but human rights abuses continue. Both Russian federal forces and Chechen rebel forces act with impunity while engaging in torture, summary executions, disappearances, and arbitrary detentions. Additional problems include corruption, media suppression, life-threatening prison conditions, and corruption in law enforcement.

The U.S. Department of State reports allegations that Russian government officials and others conduct warrantless searches of residences and other premises and electronic surveillance without judicial permission. This surveillance includes Ministry of Internal Affairs and Federal Security Office monitoring of internet and e-mail traffic. Additionally, Russian law enforcement agencies have legal access to the personal information of users of telephone and cell phone services.

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 to be 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, administrative judges apply the guidelines 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The 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 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 adverse 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 ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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; and
- (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.

Applicant's parents and daughter are citizens and residents of Russia. Russia is a diplomatic and strategic partner of the United States in some areas where both countries have mutual interests. For example, Russia is a key partner in efforts to reduce proliferation of weapons of mass destruction and control of nuclear materials. However, Russia is also one of the world's most aggressive nations in the collection of

U.S. intelligence and sensitive economic information. Applicant's family members' presence in Russia creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

SOR ¶ 1.b alleges that Applicant's father is a former member of the Communist Party. That is a fact and circumstance included in the allegation in SOR ¶ 1.a that Applicant's "parents are citizens and residents of Russia." SOR ¶ 1.b is concluded for Applicant.

Applicant has visited Russia once since she has immigrated to the United States. That does not raise security concerns independent of those raised by her family's presence in Russia. SOR ¶ 1.d is concluded for Applicant.

The government has not established that Applicant told an investigator in a 2002 interview that a threat against her family members in Russia could be used to coerce or compromise her. That information, even if established, would be a fact and circumstance included in the allegations that Applicant's parents and daughter are citizens and residents of Russia. SOR ¶ 1.e is concluded for Applicant.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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.

Applicant is clearly a loyal U.S. citizen with no allegiance to the government of Russia. However, because of her close family ties to Russia and the nature of the government of Russia, I am unable to find any of the mitigating conditions to be fully applicable to the security concerns related to her parents and daughter.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the totality of Applicant's family ties to Russia. Her parents and daughter are citizens and residents of Russia. Her father is no longer a member of the Communist Party. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Russia engaged in armed conflict with a democracy friendly with the United States; it has human rights issues; it has been victimized by terrorism; and it is known to conduct intelligence operations against the United States. The complicated relationship of Russia to the United States places a significant burden of persuasion on Applicant to demonstrate that her immediate family members in Russia do not pose a security risk. Applicant is obviously an intelligent, honest, trustworthy, and loyal U.S. citizen. She simply was unable to mitigate the considerable security concerns raised by her family in Russia.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Foreign Influence security concerns.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.e:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge