



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



In the matter of:)	
)	
)	ISCR Case No. 08-11967
)	
)	
Applicant for Security Clearance)	

Appearances

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

April 7, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference. Applicant’s eligibility for a security clearance is denied.

On August 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference. 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 effective within the Department of Defense for SORs issued after September 1, 2006.

In an undated answer to the SOR, Applicant elected to have his case decided on the written record. On October 20, 2009, Department Counsel submitted the

Government's File of Relevant Material (FORM). The FORM was mailed to Applicant and it was received on October 28, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on March 3, 2010.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request, included in the FORM, that I take administrative notice of certain facts relating to Russia. Applicant did not object and the request is approved. The source documents were included as part of the FORM and are included in the record. They are Hearing Exhibits. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's answer to the SOR he admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old and is employed by a defense contractor. He was born in Russia, immigrated to the United States, and became a naturalized citizen in August 2007. He married in 1979 and his wife is a citizen of Russia and a registered alien in the United States. They have one child born in Russia in 1980, who became a naturalized U.S. citizen in 2004. Applicant earned a bachelor's degree, master's degree, and PhD in Russia.¹

Applicant holds a Russian passport that he obtained in June 2007, and which expires in June 2012. He used the Russian passport for entry into that country after he became a U.S. citizen. During his interview with the investigator from the Office of Personnel Management (OPM) in October 2008, he stated he would renounce his citizenship with Russia and surrender his Russian passport if it were a condition of his employment.² On April 1, 2009, in response to interrogatories that asked whether he was willing to destroy, surrender, or invalidate his Russian passport he stated:

This is not allowed by Russian law and may be penalized and will draw unnecessary attention to my activities. (1) I need passport for occasional travel to Russia (e.g. family emergency). (2) Russian Federation requires certain procedure for passport return.³

¹ The FORM did not include the date when Applicant moved to the United States. However, Applicant listed on his SF 86 a place of residence in the United States in 1998. Item 4.

² Item 5.

³ *Id.*

Applicant intends to use his Russian passport in the future, and is not willing to destroy, surrender, or invalidate it. Applicant continues to exercise dual citizenship with Russia and feels compelled to follow Russian laws that pertain to its citizens.

Applicant owns an apartment in Russia valued at approximately \$100,000. He has owned the apartment since 1983 and intends on maintaining ownership for at least five to ten years. He estimated his net assets in the United States to be approximately \$270,000. Applicant admitted on his answer to the SOR that he maintains his Russian citizenship to protect his financial interest.⁴

Applicant's sister and mother-in-law are citizens and residents of Russian. His sister works in a bank. He is close to his sister and contacts her monthly. His mother-in-law is elderly and bedridden. She was a music teacher. Applicant has contact with her monthly when his wife calls her on the telephone.⁵

Applicant maintains contact with a college friend who is a citizen and resident of Russia. He contacts him about every three months by telephone. His friend works in the food distribution industry.⁶

Applicant traveled to Russia in 2002, 2003, 2004, 2006 to 2007, and 2008 to 2009. Some of the trips were to attend funerals for family members, others were for pleasure.

Russia

Russia is a federation composed of 12 republics. Its population of 142 million people is multinational and multi-ethnic. Russia achieved independence with the dissolution of the Soviet Union in 1991. The Government has an increasingly centralized political system, with power concentrated in the president and prime minister, a weak multiparty political system, and a ruling party dominated by a bicameral legislature. Russia is a nuclear superpower that, since the dissolution of the Soviet Union, continues to develop politically, socially, and economically.

Since 2003, U.S.-Russian relations have been strained due to tensions on a number of issues. These include an incident in which Russia sent its army across an internationally recognized boundary to attempt to change, by force, the borders of Georgia, a country with a democratically-elected government. Russia also issued threats against Poland, including the threat of nuclear attack. There have been suspicious poisonings and killings of journalists and those deemed "undesirable," and

⁴ Answer to SOR. In his interview with the OPM investigator, Applicant disclosed he did not have any financial connections or interests in Russia. He later provided information about his financial interests when he completed the interrogatories. Item 5.

⁵ *Id.*

⁶ *Id.*

the creation in the state-controlled Russian media of an “enemy image” of the United States.

Russia has an active, recent, and ongoing collection program targeting the United States for sensitive and protected U.S. technology. Russia and China have been the most aggressive collectors and accounted for the majority of such targeting. Russia’s lead in the targeting of U.S. technologies, through its industrial espionage efforts dates back to at least 1997. Russian espionage specializes in military technology and gas and oil industry technical expertise.

Russia actively provides various technologies to other countries, including Iran, Syria, and Venezuela, contrary to U.S. concerns. It also has provided missile technology to China, Iran, Syria, and Venezuela. Russia has refused to cease constructing nuclear reactors in Iran, despite U.S. concerns and economic sanctions.

Russia’s internal problems include recent acts of terrorism. The U.S. Department of State has warned U.S. citizens about dangers in travel to parts of Russia. The Chechen conflict has led to human rights abuses as security forces engage in killings, torture, abuse, violence, and other brutal or humiliating treatment, often with impunity. Overall, Russia’s human rights record remains uneven and poor in some areas. Specific instances of human rights abuses, as reported by the U.S. Department of State, include: reports that the government or its agents committed politically motivated killings, and other arbitrary killings, credible reports that law enforcement engaged in torture, abuse, and violence, extremely harsh and life threatening prison conditions, and arbitrary arrest and detention.

An example of the Russian government’s restrictions on freedom of movement within the country is that all adults must carry a government-issued internal passport while traveling within the country. They are also required to register with the local authorities within a specified time of their arrival at a new location.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 that an applicant may deliberately or inadvertently fail to 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

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 conditions that could raise a security concern and may be disqualifying. I have considered all of them and especially considered the following:

- (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;
- (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; 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.

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 contact 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.

Applicant's wife is a citizen of Russia and is a resident alien of the United States. His sister, mother-in-law, and close friend are all citizens and residents of Russia. He travels regularly to Russia for family visits. No information was provided as to how often his wife travels to Russia. His sister is a teacher. His mother-in-law no longer works and is bedridden. No information was provided about whether she receives a pension or subsistence from the government. Applicant has regular contact with his relatives and friend. These relationships and contacts create a heightened risk of foreign pressure, or attempted exploitation, given the nature of Russia's aggressive collection program through industrial espionage, and targeting the United States sensitive technology. They also create a conflict of interest because his relationships are sufficiently close to raise a security concern. Therefore, I find disqualifying conditions AG ¶ 7(a) and (b) apply.

I find disqualifying condition AG ¶ 7(d) applies to Applicant's wife. It appears she has lived with him in the United States since they immigrated. He became a naturalized U.S. citizen, she did not. Applicant's relationship with his wife creates a potential conflict of interest between his obligation to protect sensitive information or technology and his obvious loyalty and desire to help his wife, if the situation should arise. Applicant has a substantial financial interest in Russia. He intends on maintaining his interests in

Russia, which is approximately one-third of his total wealth. Based on Applicant's substantial financial interests, Russia's human rights abuses, and its active industrial espionage record there is a heightened risk of foreign influence and exploitation. Therefore, disqualifying condition AG ¶ 7(e) applies

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests;
- (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; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

In the past, Applicant has traveled to Russia for family matters and maintains a Russian passport so he can travel for emergencies in the future. He visits his relatives when in Russia. He maintains regular contact with them and his friend. His wife is a citizen of Russia and presumably travels there too. These close personal relationships are a concern, as is Russia. Considering the Russian government's human rights practices, its aggressive espionage activities, and its political stance toward the United States, it is likely that Applicant could be placed in a position of having to choose between the interests of his family and the interests of the U.S. I find mitigating condition AG ¶ 8(a) does not apply. Equally troubling is that Applicant maintains dual citizenship with Russia and his wife maintains her Russian citizenship. Those facts create a conflict of interest. Applicant has not provided sufficient evidence to conclude that his sense of loyalty to his wife and family in Russia is so minimal that any conflict would be resolved in favor of the United States. I find mitigating condition AG ¶ 8(b) does not apply. Applicant's contact and communication with his wife, relatives, and friend are not casual or infrequent, as he has frequent contact with them. His relationships could create a risk for foreign influence and exploitation. I find mitigating condition AG ¶ 8(c) does not apply. Applicant has a substantial financial interest in Russia. He maintains his dual citizenship in order to protect that financial interest.

Based on the value of Applicant's financial interest in Russian and his net worth in the U.S., I conclude it could create a conflict and be used to influence, manipulate, or pressure Applicant. I find mitigating condition AG ¶ 8(f) does not apply.

Guideline C, Foreign Preference

AG ¶ 9 expresses the security concern regarding foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, 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 conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(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 . . . (5) using foreign citizenship to protect financial or business interests in another country.

Applicant holds a valid Russian passport. He has used the passport to gain entry into Russia after he became a U.S. citizen. He maintains his Russian citizenship to protect his financial interests in Russia. I find disqualifying condition AG ¶ 10(a) (1) and (5) applies.

I have considered all the mitigating conditions under AG ¶ 11. Specifically I have considered the following:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

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

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor; and

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

Applicant's dual citizenship is not based solely on his birth in a foreign country. He was born in Russia and exercised his Russian citizenship after he became a U.S. citizen by maintaining and using his Russian passport. I find AG ¶ 11(a) does not apply. Applicant has not categorically expressed a willingness to renounce his Russian

citizenship. He made a statement to the OPM investigator that he would renounce it if his job required it. I find mitigating AG ¶ 11(b) does not apply. Applicant was provided an opportunity to destroy or surrender his Russian passport. He chose not to do so because he intends to use it to travel to Russia in the future and maintain his financial interests there. I find mitigating conditions AG ¶ 11(b), (c), and (e) do not apply.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a dual citizen of Russia. He maintains a Russian passport that he has used to travel there after he became a U.S. citizen. He intends to retain his Russian passport to protect financial interests and visit family there. His wife is a Russian citizen, who resides in the United States. He maintains close personal contact with his sister, mother-in-law, and friend.

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 foreign government, or the country is known to conduct intelligence operations against the United States. Russia conducts intelligence operations against the United States. There is derogatory evidence regarding Russia's human rights record and the Government's actions against its citizens. This places the burden of persuasion on Applicant to demonstrate that his contacts in Russia do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his family members. With its negative human rights record and its Government's willingness to use force and violence against

its citizens, it is conceivable that Applicant's family members could be vulnerable to coercion.

Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the Guideline B, Foreign Influence, and Guideline C, Foreign Preference.

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
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against 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.

Carol G. Ricciardello
Administrative Judge