



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 09-00981  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

December 15, 2009

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86) on July 28, 2008. On an undetermined date in 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines B (Foreign Influence) and 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 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 August 1, 2009, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on October 5, 2009.<sup>1</sup> Applicant received a

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<sup>1</sup>The Government submitted six items in support of its contention.

complete file of relevant material (FORM) on October 21, 2009, and was provided an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case. Applicant submitted additional documentary information (AE A) in a timely manner. The case was assigned to me on November 21, 2009. Eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Russian Federation (Russia). The request and the attached documents are included in the record as Item 4. The facts administratively noticed are set out in the Findings of Facts, below.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 2.b, d, e, and f. She denied the factual allegation in ¶ 2.a. Her admissions are incorporated in my findings of fact. I make the following findings:

Applicant is a 24-year-old employee of a defense contractor. She has worked in the financial/insurance field in the United States since June 2001. She has been employed with her current employer since March 2008 (Item 1).

Applicant was born in Russia but moved to the United States with her mother when she was young. She graduated from an American high school in 1999, and attended a college in the United States from 2003 to 2007. Applicant obtained her degree in economics and finance in 2007. She is single and has no children (Item 1). She became a naturalized U.S. citizen in October 2000.

Applicant's parents are divorced. Her mother is a United States naturalized citizen and lives in the United States. Her father is a citizen and resident of Russia. Applicant has no contact with him. Applicant has not seen him since her parents divorce in Russia. He is not involved in her life. She does maintain contact with his mother (her paternal grandmother) by phone every couple of years. Applicant acknowledged that she also visited her grandmother during her four trips to Russia (Item 5).

Applicant's maternal grandparents are citizens and residents of Russia. Her grandmother is approximately 80 years old and is in poor health. Her grandfather is 86 years old and is also in poor health. He retired in 1991, from his position as an engineer from a research and development center. They both receive pension benefits from the government for their service in World War II. She talks to her grandparents on a monthly basis. She visited them in 1998, 1999, 2004, and 2007. Her grandparents also visited Applicant in the United States on various occasions. Applicant has an aunt and uncle who live in Russia. Applicant's aunt is retired from her position as an economist with the government in Russia. Her uncle is employed with a research center in Russia. Applicant also has a cousin who lives in Russia. Her cousin is a professor at a national

university in Russia. Applicant maintains communication with her relatives through electronic mail approximately twice a year (Item 5). Applicant's family has no knowledge that Applicant is seeking a security clearance (Item 5).

In September 2008, Applicant told a security investigator that she maintains dual citizenship with Russia and the United States because she travels to Russia and her Russian passport makes her travel easy. She also reports that it would hurt her grandparents if she relinquished her Russian citizenship. They want Applicant to return to Russia. Applicant intends to keep her dual citizenship until her grandparents' death. She may also inherit an apartment from her grandparents when they die, and admits that maintaining her Russian citizenship would benefit her in this process. She states she will no longer have any use for dual citizenship after their death.

Applicant's Russian passport, reissued on April 28 2009, is valid until 2014. She maintained a previous passport from June 2001 until June 2008, when it expired. She used her current Russian passport to travel to Russia in 2004 and 2007. She intends to use her Russian passport for future visits to Russia. She fears that if she needed to visit her grandparents for a medical emergency a visa with a United States passport would delay the trip.

Applicant expressed a willingness to renounce her Russian citizenship if her job required it. She maintained that her sense of loyalty to Russia is based on her familial relationship with her grandparents. She does not feel a sense of obligation to Russia, and she maintains that her ultimate loyalty is to the United States (Item 5). She intends to permanently make her home in the United States.

I have taken administrative notice that the Russian Federation (Russia) 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 bicameral legislature. Russia's large population of more than 142 million people is both multinational and multi-ethnic. Russia is a nuclear superpower that since the dissolution of the Soviet Union, continues to develop politically, socially, and economically.

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

Beyond collection activities and espionage directed at the United States, Russia provides various military technologies to other countries, including Iran, Syria, and Venezuela. Also, despite United States concerns, Russia has refused to cease constructing nuclear reactors in Iran. The United States has imposed economic sanctions on the Russian government for exporting nuclear and military technology and equipment to Iran and Syria.

Russia's human rights record remains uneven and poor in some areas. Additional specific instances of these human rights abuses, as reported by the United States 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.

## Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon an applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of an applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication an applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of an applicant that may disqualify an applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline B (Foreign Influence)

The SOR alleges Applicant’s father, maternal grandparents, paternal grandmother, aunt, uncle, and cousin are citizens and residents of Russia who hold or have held positions with the Russian government. The SOR alleges that Applicant visited Russia in 1998, 1999, 2004, and 2007 (SOR ¶¶ 2.a-2.f). The security concern relating to Guideline B is set out in AG ¶ 6 as follows:

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.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A disqualifying condition also may be raised by “connections to a foreign person, group, government, or country that creates 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.” AG ¶ 7(b). Applicant’s grandparents are citizens and residents of Russia. She contacts her grandparents approximately once a month. She last visited them in 2007. Applicant hopes to visit them in the future. They have visited her in the United States. Applicant’s grandfather retired from a Russian

space firm. She also has an aunt who was employed with the Russian government and still resides in Russia. Her uncle and cousin are citizens and residents of Russia. They work for the Russian government. Based on this evidence, AG ¶¶ 7(a) and (b) are raised.

Since the government produced evidence to raise the disqualifying condition in AG ¶¶ 7(a), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Similarly, 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.” Applicant has contacts with family members living in Russia so these two mitigating conditions cannot be fully applied.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, 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, or the country is known to conduct intelligence operations against the United States.

Security concerns under this guideline also can be mitigated by showing “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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.”

Applicant has demonstrated a strong loyalty to her family members in Russia. She maintains her Russian citizenship for the sake of her grandparents. She also hopes to inherit property after their death. She has visited Russia on four occasions since 1998. She exercised her dual citizenship with Russia by using her Russian passport after becoming a naturalized United States citizen. AG ¶ 8(b) does not apply. Applicant has not mitigated security concerns under the foreign influence guideline.

### **Guideline C (Foreign Preference)**

The SOR alleges Applicant exercises dual citizenship with Russia and possesses a Russian passport that has been renewed recently and does not expire until 2014 (¶ 1.a). The concern under this guideline is set out in AG ¶ 9 as follows: “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.”

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep 15, 1999).

A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant possesses a valid Russian passport, which she has used since becoming a naturalized United States citizen. AG ¶ 10(a)(1) is established because Applicant renewed her Russian passport in 2009, and she intends to her Russian passport in the future.

AG 10(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.” Applicant does not wish to renounce her United States citizenship, but she has expressed a familial loyalty to her grandparents in Russia which causes her to keep her Russian passport.

The burden shifted to Applicant to rebut, explain, mitigate, or extenuate the facts. Several mitigating conditions are potentially relevant.

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). This mitigating condition applies because Applicant has exercised her dual Russian citizenship by renewing and using a Russian passport after her U.S. naturalization.

Security concerns under this guideline also may be mitigated if “exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual

became a United States citizen or when the individual was a minor.” AG ¶ 11(c). Applicant has been a naturalized citizen since 2000, and has used her Russian passport after that time to travel to Russia. She intends to travel to Russia in the future using her Russian passport. Under AG ¶ 11(b) “the individual has expressed a willingness to renounce dual citizenship” is also a mitigating condition. Applicant stated that she would renounce her Russian citizenship but only if her job requires it. Applicant’s conditional willingness to renounce her dual citizenship is not sufficient for mitigation under this condition given the record as a whole. AG ¶ 11(e) “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise is invalidated” does not apply because the passport was renewed and is valid until 2014.

Applicant is a naturalized United States citizen who continues to maintain and use her Russian passport. She intends to travel to Russia in the future and will use her Russian passport. Her expressed willingness to renounce her citizenship is given little weight in light of the record evidence. Applicant has not mitigated the foreign preference concerns under the above mitigating conditions.

### **Whole Person Concept**

Under the whole person concept, an 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. An 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. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

There are factors supporting the approval of Applicant’s access to classified information. Applicant immigrated to the United States at a young age. She has lived in the United States with her mother for a number of years. She became a naturalized citizen in 2000.

Applicant was born in Russia and is a dual citizen because of her birth in Russia. She has a Russian passport which expires in 2014. Her elderly grandparents are retired and live in Russia and depend on the Russian government for their retirement benefits.



She loves her grandparents and maintains contact with them. Her grandfather and relatives hold or have held positions with the Russian government. She has visited them four times since 1998 as recently as 2007. She retains her Russian passport to visit them in an emergency. She maintains close contact with her relatives in Russia. Russia has a poor record of human rights and has an active collection program targeting intelligence information as well as conducting industrial espionage of military technology. Russia's collection activities create a heightened risk of foreign exploitation, manipulation and pressure in this case.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Foreign Preference:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Foreign Influence:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	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.

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Noreen A. Lynch  
Administrative Judge

