



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



In the matter of:)	
)	
)	ISCR Case No. 09-05357
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

May 28, 2010

Decision

CREAN, Thomas M., Administrative Judge:

On April 22, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of his employment with a defense contractor. On December 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. (Item 1) 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 in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on December 8, 2009. (Item 3)

Applicant answered the SOR on December 17, 2009. (Item 2) He admitted the two factual allegations under Guideline C and the three factual allegations under Guideline B, but denied that these facts created a security concern. He elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 31, 2010. Applicant received a

complete file of relevant material (FORM) on February 11, 2010, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not submit additional information. The case was assigned to me on April 23, 2010. Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Procedural Issues

Department Counsel in the FORM asked that administrative notice be taken of certain facts concerning Russia. I considered the request and the documents provided by Department Counsel. (Items 5 through 10) Administrative notice is taken of the facts as noted below in the Findings of Fact.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following essential findings of fact. Applicant admitted the factual allegations in the SOR with explanation but denied the factual allegations raised security concerns under foreign influence and foreign preference.

Applicant is 50 years old and has been employed as an electronic tester for a defense contractor for about one year. Applicant was born, raised, and educated in the Soviet Union before the government collapsed and it became Russia. He received the equivalent of a Bachelor's Degree in Electronics in 1982. He worked for the next 18 years, from April 1982 until August 2000, as an electrical engineer at an airport in Russia. During this time, he served his one month obligatory military service. In 1998 or 1999, Applicant submitted his request to the United States for the "green card lottery." He was advised in 2000 that he had been selected. Applicant, his wife, and his teenage daughter entered the United States pursuant to the green card lottery on September 17, 2000. In response to questions on the e-QIP concerning citizenship, Applicant responded that he has citizenship with the United States and Russia, and that he has not denounced his Russian citizenship. (Item 3, e-QIP, dated April 22, 2009; Item 4, Answers to Interrogatories, Testimonies, June 4, 2009 - June 11, 2009, at 4).

Upon entering the United States, Applicant and his family initially lived with a childhood friend who had preceded him to the United States by the green card lottery. They lived with his friend for about nine months, and then lived in a series of apartments until he purchased his own home in June 2004. Applicant quickly found work in the electronics industry. He worked at a company as a principal engineering technician from November 2000 until April 2006. That company moved its operation, so Applicant was unemployed from April 2006 until November 2006. His wife was employed, so there were minimal financial problems. Applicant worked at another electronics firm from December 2006 until April 2009, when he received a better offer from his defense contractor employer. (Item 4, Answers to Interrogatories, Testimonies, at 5)

Applicant renewed his Russian passport in April 2004, and it expired in April 2009. Applicant became a United States citizen in October 2007. His wife and daughter are also United States citizens. Applicant's parents and mother-in-law are deceased. Applicant does not have any siblings. His father-in-law is a retired Russian government employee in the agricultural area. He is approximately 73 years old and in poor health. Applicant's wife's 53-year-old half-brother resides with Applicant's father-in-law. Applicant's wife talks to her father every Sunday evening. Applicant noted in a June 2009 security clearance interview that he last spoke to his father-in-law two weeks before the interview. He last saw him in August 2000 before he left for the United States. Applicant has a number of friends in Russia with whom he maintains contact. One is a childhood friend and another is a college classmate. He talks to them about three to seven times a year by phone, and last saw them in August 2000 before he left for the United States. Another is also an electrical engineer and a fellow worker from the airport he considered his best friend. He talks to him about once a month. He last saw him about three years ago when the friend came to the United States for a conference and stayed with Applicant and his family. Another of his contacts is an electrical engineer who worked at the same Russian airport but is now employed in a store in Russia. He talks to him about every other month. He last saw him before he left for the United States. Another childhood friend is a pediatric doctor who he talks to about three to seven times a year and last saw in August 2000. Applicant also may call his supervisor at the Russian airport on New Year's Eve for a holiday greeting. Applicant has not returned to Russia since he immigrated in August 2000. He maintains a quiet normal lifestyle in the United States living with his family and repairing and improving his house. (Item 4, Answers to Interrogatories, Testimonies, at 4-5)

Since Applicant became a United States citizen in October 2007, he voted in the Russian national elections on March 3, 2008, as well as the United States Presidential election in November 2008. He told security investigators and in response to the SOR that it is his intention to renew his Russian passport in late 2009 or early 2010 to facilitate moving his father-in-law to the United States. There is no indication in the file if Applicant renewed his Russian passport. In response to the SOR, he stated that he maintains a dual citizenship with Russia because he wishes to receive a pension for his 18 year employment at the airport in Russia.

Russia is a federation of 21 republics. It is one of the world's nuclear super powers. The government continues to centralize with power concentrating in the president and prime minister. There is a weak bicameral legislature, but the president wields strong executive powers. He appoints the ministers and the prime minister. The president is also the leader of the armed forces and the Security Council. Russia is not as hostile to the United States as the old Soviet Union. However, but it is still hostile to the United States. It cannot be considered a "friendly" country.

Russia, as the Soviet Union did before it, has an active and ongoing intelligence collection program targeted on the United States. They are one of the most aggressive collectors of sensitive and protected United States technology, particularly for military,

and gas and oil industry technologies. Russia also provides various technologies to other countries, many of which are not friendly to the United States.

There is extensive and on-going terrorism in Russia. The United States Department of State warns United States citizens about dangers of traveling in Russia. The Caucasus region is especially prone to terror from the Chechen uprising which started in 1994 and continues today. There are human rights abuses, disappearances, and kidnappings. Russia's human rights record is uneven with political motivated killings, law enforcement torture, abuse, violence, arbitrary arrests and detentions, and harsh life-threatening prison conditions. Authorities do not observe the rights of privacy in residences, and there is on-going electronic wiretapping without cause. Telephone and internet companies are required to provide police and authorities access to their databases, and phone and internet lines. Individuals are restricted in their movement because they must carry identification with them at all times, and must register with local authorities within a certain timeline after arriving in an area. (See, United States Department of State, Background Notes - Russia, April 2009)

Policies

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

Analysis

Guideline B: 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 the 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 consideration 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 ¶ 6)

Applicant has frequent contact with his father-in-law in Russia. His wife talks to her father weekly, and Applicant talks to him on occasion. Applicant also intends to bring his father to the United States to live with them. This indicates that Applicant has a close relationship with his father-in-law, who is a citizen and resident of Russia. There is no information to suggest the extent of his relationship and contacts, if any, with his brother-in-law. However since he lives with Applicant's father-in-law, it can be assumed that there is some form of relationship and some level of communications, no matter how minor. He does acknowledge that his brother-in-law is a resident and citizen of Russia. Applicant does contact a number of friends in Russia and talks to them a number of times a year. He has not seen any of them since he immigrated to the United States, except one who visited him in the United States when he came here to attend a conference. Applicant's contact with his father-in-law, brother-in-law, and friends raises security concerns under Foreign Influence Disqualifying Conditions (FI DC) 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); and FI DC AG ¶ 7(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)..

The mere existence of a foreign family members or friends is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contact with his father-in-law, brother-in-law, and friends in Russia must be examined to determine whether the contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime a family member is subject to a foreign government. The factors that heighten the risk in Applicant's case are the extensive human rights abuses, terrorist activity, on-going extensive intelligence gathering, and the Russian hostility towards the United States.

Applicant raised facts to mitigate the security concerns for his father-in-law and friends in Russia. I have considered Foreign Influence Mitigating Conditions (FI MC) AG ¶ 8(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.); FI MC AG ¶ 8(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 FI MC AG ¶ 8(c) (Contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." The underlying premise was that an applicant should not be placed in a position where he or she is forced to make a choice between the interest of the family members and friends and the interest of the United States. There was no balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the United States interest.

The nature of the human rights abuses, terrorist threats, intelligence collection, and conflicts in Russia places a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. Applicant's relationship with his father-in-law is close. His wife talks to her father almost weekly, and Applicant talks to him occasionally. Applicant plans to bring his father-in-law to the United States to live with him. This indicates a close and not casual relationship so there could be a circumstance where Applicant is placed in a position of having to choose between his father-in-law in Russia and the interests of the United States. He does not talk about any contacts with his brother-in-law. The contacts, if any, with his brother-in-law appear to be casual and minor. Contacts with his friends are also not frequent, just a few times a year by telephone, and are as casual friends only. His sense of loyalty or obligation to them is that of only a friend or acquaintance rather than a personal sense of loyalty or

obligation to the individual. This infrequent and casual friendly contact and friendly loyalty or obligation does not create a security concern. There is no heightened risk of foreign exploitation, inducement, manipulation, or pressure. The infrequent and casual contacts and his friendship with them do not raise a conflict of interest if he had to protect classified information. Accordingly, FI MC AG ¶ 8(a) and FI MC AG ¶ 8(c) do not apply to Applicant's father-in-law, but does to the brother-in-law and the friends.

Applicant has some sense of loyalty to Russia. He was educated in Russia, lived there for 40 of his 50 years, worked for many years at one job, and still has friends and family in Russia. Since he did apply for the green card lottery and came to the United States, he does have a positive feeling for this country. He and his family came to this country for a better life. A conflict of interest between his sense of loyalty to his father-in-law and sense of loyalty to the United States is possible. In balancing all of the factors mentioned and considered above with regard to his father-in-law, I am not satisfied Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States. I am convinced that his relationship with his friends and brother-in-law is such that he would resolve any conflict of interest regarding them in the interest of the United States. FI MC AG ¶ 8(b) does not apply to his father-in-law, but does apply to his friends and brother-in-law. Applicant has not met his heavy burden to show that his contact with his father-in-law does not cause a security concern. I conclude Applicant has not mitigated security concerns rising from his contact with his father-in-law in Russia, but has mitigated the security concern for his contact with his friends and brother-in-law in Russia.

Guideline C, 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 may be prone to provide information or make decisions that are harmful to the interests of the United States (AG ¶ 9). The principal goal of the Foreign Preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is approved. It is not a measure of Applicant's loyalty to the United States.

Applicant is a dual citizen of Russia and United States. Applicant stated in his security clearance application, as well as in response to the SOR, that he is a dual citizen of the United States and Russia. The United States Supreme Court has recognized a right under the United States Constitution for United States citizens to have a dual citizenship with another country. (*Afroyim v. Rusk*, 387 U.S. 253 (1967)). Eligibility for a security clearance must be determined by application of the disqualifying conditions for foreign preference to the factual circumstances. The President in promulgating the disqualifying conditions could have specified that dual citizenship by itself was a security concern, but he did not. The rule concerning dual citizenship raises a security concern based only on an exercise of dual citizenship. Applicant came to the United States on a Russian passport. He received a United States passport when he became a United States citizen in October 2007. His Russian passport expired in April 2009, but Applicant twice indicates he would renew his Russian passport. Since

Applicant indicated his intent to renew the passport and there is no statement from Applicant that the passport was not renewed, it is reasonable to assume and find that Applicant has a current Russian passport. Since becoming a United States citizen, he voted in the Russian presidential election in March 2008. His possession of a Russian passport and his voting in a foreign election raises Foreign Preference Disqualifying Condition (FP DC) AG ¶ 10(a) (Exercise of any right, privilege, or obligation of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; and (7) voting in a foreign election).

In regard to FC DC AG 10(a), I have considered Foreign Preference Mitigating Conditions (FP MC) AG ¶ 11(b) (The individual has expressed a willingness to renounce dual citizenship), and FP MC AG ¶ 11(e) (The passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated). Applicant has not denounced his citizenship with Russia. In fact, he positively states he is a dual citizen with Russia. He stated he would renew his Russian passport, so it is assumed that he has in his possession a valid current Russian passport. He has not presented evidence to the contrary. Applicant has not mitigated security concerns for access to classified information raised by his exercise of dual citizenship with Russia.

“Whole-Person” Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant’s security eligibility 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) 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered that Applicant came to the United States for a better and freer life for he and his family. He has done well in the United States, finding work, owning a house, and prospering. I considered he has a father-in-law in Russia that he is close to and intends to have him come to the United States. I also considered he exercised dual citizenship with Russia by possessing a Russian passport and voting in the Russian presidential election. Applicant failed to present information that his contacts with his

father-in-law in Russia and his exercise of dual citizenship do not create a security concern. Access to classified information is denied.

Formal Findings

Paragraph 1, Guideline C: AGAINST APPLICANT

 Subparagraph 1.a: Against Applicant

 Subparagraph 1.a (1): Against Applicant

 Subparagraph 1.a (2): Against Applicant

Paragraph 2, Guideline B: AGAINST APPLICANT

 Subparagraph 2a: Against Applicant

 Subparagraph 2.b: For Applicant

 Subparagraph 2.c: 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.

THOMAS M. CREAN
Administrative Judge