



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



In the matter of:)
)
-----) ISCR Case No. 09-05781
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

November 9, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On October 9, 2008, Applicant applied for a security clearance and submitted an e-QIP version of a Security Clearance Application (SF 86).¹ On December 11, 2009, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories. He responded to the interrogatories on December 18, 2009.² On December 31, 2009, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For*

¹ Government Exhibit 1 (SF 86), dated October 9, 2008.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated December 18, 2009).

Access to Classified Information (effective within the Department of Defense on September 1, 2006) (AG). The SOR alleged security concerns under Guideline B (Foreign Influence), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on an unspecified date before January 13, 2010.³ In a sworn, written statement, dated January 8, 2010, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on March 2, 2010, and the case was assigned to me on March 9, 2010. A Notice of Hearing was issued on March 18, 2010, and I convened the hearing, as scheduled, on April 21, 2010.

During the hearing, 4 Government exhibits and 17 Applicant exhibits were received without objection. Applicant and one other witness testified. The transcript of the hearing (Tr.) was received on April 30, 2010.

Rulings on Procedure

On March 2, 2010, Department Counsel requested that the administrative judge assigned the case take Administrative Notice of certain enumerated facts pertaining to the Russian Federation (Russia), appearing in 10 written submissions. On April 14, 2010, Department Counsel submitted an amended request for administrative notice, substituting more recent versions of some of the previously submitted documents. Facts are proper for Administrative Notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Russia in publications of the Department of State;⁴ the Congressional Research Service;⁵ the Office of the National Counterintelligence Executive;⁶ the Defense Intelligence Agency;⁷ and the Director of National Intelligence.⁸

³ The date indicated on the receipt is unclear, but the receipt was received by DOHA in January 13, 2010.

⁴ U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Russia*, dated April 2009; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Country Reports on Human Rights Practices: Russia*, dated March 11, 2010; U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Russia*, dated August 6, 2009; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2008, Chapter 2. Europe and Eurasia Overview*, dated April 30, 2009; U.S. Department of State, Testimony of Assistant Secretary of State for European Affairs, before the Senate Committee on Armed Services: *The Current Situation in Georgia and Implications for U.S. Policy*, dated September 9, 2008.

⁵ Congressional Research Service, Library of Congress, *Russian Political, Economic, and Security Issues and U.S. Interests*, dated January 29, 2010.

⁶ Office of the National Counterintelligence Executive, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005*, dated August 2006; and Office of the National Counterintelligence Executive, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2007*, dated September 10, 2008.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,⁹ as set forth below under the Russia subsection.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in ¶¶ 1.a. through 1.d., of the SOR.

Applicant is a 37-year-old employee of a defense contractor, and he is seeking to obtain a SECRET security clearance. He has been employed as an electrical engineer by the same government contractor since October 2008.¹⁰

Foreign Influence

Applicant was born in 1973¹¹ to Russian parents residing in Russia.¹² After graduating from high school, he entered a Russian university, eventually earning a B.S. in International Industrial Management and an M.S. in Aerospace Engineering in 1996.¹³ He took Army Reserve courses while in school in lieu of active military service to satisfy any Russian military requirements.¹⁴ During his third year at the university, he took English classes taught by American professors, and, for the first time in his life, was exposed to American values and liberties.¹⁵ In 1994, he came to the United States for the first time to visit some former classmates and professors, all of whom were U.S.

⁷ Defense Intelligence Agency, Director's Statement before the Senate Committee on Armed Services: *Annual Threat Assessment*, dated March 10, 2009.

⁸ Director of National Intelligence, Statement before the Senate Select Committee on Intelligence: *Annual Threat Assessment of the U.S. Intelligence Community*, dated February 2, 2010.

⁹ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents).

¹⁰ Applicant Exhibit F (Letter of President and CEO of Applicant's employer, dated April 13, 2010).

¹¹ Government Exhibit 1, *supra* note 1, at 6.

¹² *Id.* at 22-23; Tr. at 47.

¹³ Government Exhibit 1, at 13-14. Applicant also referred to the degree as an M.S. in Aerospace Technology. See Tr. at 6, 45.

¹⁴ Tr. at 45-48.

¹⁵ *Id.* at 36.

citizens.¹⁶ He stayed for a month.¹⁷ He returned to Russia, and, in 1997, assisted American missionaries in Russia with English-Russian translations.¹⁸

In 1998, Applicant returned to the United States, this time for three months to visit the missionaries and their daughter.¹⁹ He never returned, for he applied for an extension of his visa, and a combination of circumstances resulted in his remaining in the United States, first as a permanent resident, and then as a U.S. citizen.²⁰ He eventually proposed to the daughter, and in March 1999, they were married.²¹ Applicant and his wife have three children: sons born in the United States in 2003, 2005, and 2009, respectively.²² He became a naturalized U.S. citizen in September 2004.²³

Commencing in 1999, and continuing until his current employment in 2008, Applicant started at the bottom. He took whatever work he could get and did several low-end jobs, including cleaning toilets and crawling through boat bilges to install electronics.²⁴ He also worked as a technical support engineer, an electrical engineer, and electronics specialist.²⁵ He continued his education by taking courses at two U.S. universities with a goal of eventually earning a degree in electrical engineering.²⁶

Applicant and his wife own a home in the United States,²⁷ and he maintains two 401(k) plans through his employer.²⁸ His church is here and all of his friends and family – his wife’s family, which he considers his family, are in the United States.²⁹ He stated: “All my life is here. I don’t have anything back in Russia. I don’t have any real estate, any retirement, or any other interests in Russia.”³⁰ He added: I consider myself an

¹⁶ *Id.* at 37, 42-43.

¹⁷ *Id.* at 43.

¹⁸ *Id.* at 38.

¹⁹ *Id.* at 38, 44.

²⁰ *Id.* at 44.

²¹ Government Exhibit 1, *supra* note 1, at 21.

²² *Id.*; Tr. at 39.

²³ *Id.* Government Exhibit 1, at 7.

²⁴ Tr. at 38.

²⁵ Government Exhibit 1, *supra* note 1, at 15-18.

²⁶ Applicant Exhibit A (University Transcript, dated April 9, 2010); Applicant Exhibit B (University Transcript, dated April 9, 2010); Tr. at 39.

²⁷ Applicant Exhibit E (Warranty Deed, dated June 15, 2009).

²⁸ Applicant Exhibit C (Retirement Savings Plan, dated March 31, 2010); Applicant Exhibit D (Retirement Plan, dated March 31, 2010).

²⁹ Tr. at 39.

³⁰ *Id.*; *See also Id.* at 54.

American. I don't think of myself as a Russian. . . ."³¹ His ultimate loyalty is to the United States, and he feels no allegiance or obligation to Russia.³² He stated:³³

I am proud to be an American. I consider it's a privilege to live here in this country and enjoy all the God-given freedoms that we have, and just proud also to be able to work in a place where I make some difference . . . , a positive difference in the safety of this country.

And referring to his children, Applicant stated: ". . . they are Americans one hundred percent, they don't even speak Russian, and they don't know any other life than this."³⁴

Applicant's parents were divorced when he was seven years old.³⁵ His nearly 80-year-old father, a Russian citizen and resident, was born in 1931.³⁶ He is a retired mechanical engineer, formerly with a Russian governmental research institute.³⁷ The father served in the Russian Army for about five years.³⁸ He has no current relationship with the Russian government, military, or intelligence services. Following his parents' divorce, Applicant saw his father "maybe once a month" when he Applicant was a child.³⁹ He characterizes their relationship as "not really that close," although he acknowledges that he loves his father.⁴⁰ Since leaving Russia permanently, Applicant has seen his father on two occasions,⁴¹ and speaks with him by telephone once every two months or when there is a birthday.⁴² His father does not have e-mail.⁴³ They last spoke about two months before the hearing.⁴⁴

³¹ *Id.*

³² Personal Subject Interview, dated June 9, 2009, attached to Government Exhibit 2, *supra* note 2, at 2.

³³ Tr. at 41.

³⁴ *Id.* at 39.

³⁵ *Id.* at 56.

³⁶ Government Exhibit 1, *supra* note 1, at 23.

³⁷ Personal Subject Interview, *supra* note 32, at 2.

³⁸ *Id.*

³⁹ Tr. at 56, 59.

⁴⁰ *Id.* at 59.

⁴¹ *Id.* at 56.

⁴² *Id.* at 59.

⁴³ *Id.* at 58.

⁴⁴ *Id.* at 57.

Applicant's nearly 70-year-old mother, a Russian citizen and resident, is an assistant plant manager for a manufacturing company, and was, until sometime between 1988 and 1990, a mechanical engineer at the same Russian governmental research institute with which his father was associated.⁴⁵ At the time, she did design research for the Russian military.⁴⁶ She has no current relationship with the Russian government, military, or intelligence services. After his parents' divorce, Applicant resided with his mother and older sister.⁴⁷ Since leaving Russia permanently, Applicant has seen his mother on two occasions when she visited the United States for a few weeks in 2006 and close to a month in 2009.⁴⁸ They also visited when Applicant traveled to Russia in 2003, 2006, and 2007, and stayed with his mother.⁴⁹ Applicant and his mother have nearly monthly contact by telephone and less frequent contact by e-mail.⁵⁰

Applicant's 43-year-old unmarried sister, a Russian citizen and resident, was born in 1967.⁵¹ She has been a librarian at a Russian university nearly all of her life, and has resided with her mother since her parents' divorce.⁵² Applicant characterizes his relationship with his sister as "not really that close."⁵³ She has no other relationship with the Russian government, military, or intelligence services. They rarely speak, except when Applicant calls on her birthday each year.⁵⁴

After becoming a naturalized U.S. citizen in September 2004, Applicant maintained his Russian passport that had been renewed in 2004 and again in 2007, and he actually used it on occasion, solely for convenience.⁵⁵ When a possible issue or concern arose regarding his retention of the Russian passport, Applicant had no reservations or reluctance to surrender it.⁵⁶ That passport was destroyed at Applicant's request by his employer's facility security officer in October 2009.⁵⁷

⁴⁵ Personal Subject Interview, *supra* note 32, at 2; Government Exhibit 1, *supra* note 1, at 22.

⁴⁶ *Id.*

⁴⁷ Tr. at 60.

⁴⁸ *Id.* at 55.

⁴⁹ *Id.* at 65-67.

⁵⁰ *Id.* at 57.

⁵¹ Government Exhibit 1, *supra* note 1, at 24-25.

⁵² Tr. at 58, 60.

⁵³ *Id.* at 56.

⁵⁴ *Id.* at 58.

⁵⁵ *Id.* at 48, 55; Government Exhibit 2, *supra* note 32, at 4; See also, Applicant's corrections to his Personal Subject Interview, at para. 4, wherein he stated the most recent renewal occurred in 2007.

⁵⁶ Tr. at 49.

⁵⁷ Government Exhibit 3 (Statement from FSO, dated October 26, 2009); Tr. at 49.

When Applicant became a naturalized U.S. citizen, he took an oath of allegiance to the United States. That oath included the words:⁵⁸

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen.

. . .

While he has personally renounced his Russian citizenship emotionally and under U.S. law,⁵⁹ he has not formally relinquished it under Russian law as it is a long and costly process, requiring that he return to Russia, with a valid Russian passport, to do so. However, he is willing to commence the process, if necessary.⁶⁰

Character References

The President/CEO of Applicant's employer not only offered written support for Applicant, but also testified on his behalf. He, the former Vice President for Joint Programs, the Chief Financial Officer, the FSO, the Deputy Program Manager, and several co-workers, are highly supportive of Applicant's application for a security clearance. Based on their relationship with him, and observation of him, they have characterized him with the following common terms: integrity, character, trustworthy, loyal, religious, respectful, forthright, dedicated, exemplary, exceptionally diligent, professional, devoted, humble, and fair. His pastor, a former supervisor from a previous employer, as well as a current government "client" are, likewise effusive in their support for his application.⁶¹

Russia

Russia is composed of 21 republics. The Government consists of a strong president, a prime minister, a bicameral legislature, and a weak judiciary often subject to political manipulation. 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, and remains a nuclear superpower that continues to develop politically, socially, and economically. On paper, Russia has recognized the legitimacy of international human rights standards, but it continues to be a "police state" where human rights abuses are rampant. There are numerous reports of human rights abuses, including law enforcement personnel engaged in torture, abuse, and violence to coerce confessions from suspects, with little accountability, despite the fact that the law prohibits such practices; widespread corruption within the police force; arbitrary arrest and detention; politically motivated arrests; abductions; and life threatening prison conditions. The

⁵⁸ 8 C.F.R. § 337.1(a) (1995).

⁵⁹ Tr. at 40.

⁶⁰ *Id.* at 50, 53-54.

⁶¹ *Id.* at 26-35; Applicant Exhibits F through Q (Character References, various dates).

media is largely state-controlled. There are restrictions on freedom of movement within the country, and all adults must carry government-issued internal passports while traveling internally, and they are required to register with the local authorities within a specified time of their arrival at a new location.

Russia's two main intelligence services are the Russian Foreign Intelligence Service (SVR) and the main Intelligence Directorate of the General Staff (GRU), both overseen by the Russian National Security Council and coordinated through the Permanent Interbranch Commissions of the National Security. Its intelligence capability is significant and focuses on collection of information from the United States. The Soviet Union engaged in a series of high profile espionage missions against the United States, and Russia has continued the tradition. Russia is one of the two most aggressive collectors of sensitive and protected U.S. technology and accounts for the majority of such targeting. Russia also provides technologies which could be used in the construction of weapons of mass destruction and missiles to other countries. It is a leading arms exporter, with major sales of advanced weapons and military-related technology to China, India, Iran, and Venezuela. Nevertheless, the United States and Russia share common interests on a broad range of issues, including counterterrorism and the drastic reduction of strategic arsenals.

Russia has attempted to reassert its dominance in, and integration of, the former Soviet states and has generally been successful with Belarus and Armenia. It has remained unwelcomingly active in the internal affairs of several of its neighboring countries—former republics of the Soviet Union or occupied “independent countries”—such as Georgia, Ukraine, Azerbaijan, and Moldova, and has issued threats against Poland, the Czech Republic, and Estonia.

U.S. citizens who have, at one time, held Russian citizenship, may be required to renounce Russian citizenship before applying for a Russian visa in their U.S. passport. Unless a Russian citizen has formally renounced his or her Russian citizenship, he or she risks being considered a Russian citizen and not allowed to depart except on a Russian passport.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁶² 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 have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁶³

⁶² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁶⁴ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁶⁵

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁶⁶

⁶⁴ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

⁶⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶⁶ *Egan*, 484 U.S. at 531

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁶⁷ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 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 contacts 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.⁶⁸ Applicant’s relationship with his parents and sister in Russia, and his travels to Russia, are current concerns for the Government.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” is potentially disqualifying. Similarly, under 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

⁶⁷ See Exec. Or. 10865 § 7.

⁶⁸ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

individual's desire to help a foreign person, group, or country by providing that information" may raise security concerns. I find AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his three family members who are Russian citizen-residents to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where "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." Similarly, AG ¶ 8(b) may apply where the evidence shows "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." In addition, AG ¶ 8(c) may apply where "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." In this instance, his relationship with those family members is neither casual nor infrequent. Accordingly, AG ¶ 8(c) does not apply.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, including the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.⁶⁹ In fact, the Appeal Board has cautioned against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B."⁷⁰

Nevertheless, the relationship between a foreign government and the United States may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the United States through the applicant. It is reasonable to presume that although a friendly relationship, or the existence of a democratic government, is not determinative, it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

⁶⁹ See ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002).

⁷⁰ ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

As noted above, since the breakup of the Soviet Union, the United States and Russia have developed a closer, less confrontational, relationship. Nevertheless, Russia continues to be a “police state” where human rights abuses are rampant, with little accountability. Russia has been one of the two most aggressive collectors of sensitive and protected U.S. technology and accounts for the majority of such targeting. Russia’s relationship with the United States, and its human rights record are relevant in assessing the likelihood that 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. The complicated relationship of Russia to the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his parents and sister 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 those family members. With its occasionally adversarial stance and its mixed human rights record, it is conceivable that Russia could target any citizen in an attempt to gather information from the United States.

There is no evidence that Applicant’s parents or sisters are, or have been, political activists, challenging the policies of the Russian Government. There is no evidence that terrorists have approached or threatened Applicant or his parents or sister for any reason. There is no evidence the Russian Government has approached Applicant. There is no evidence that his parents or sister currently engage in activities that would bring attention to themselves or that they are even aware of Applicant’s work. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Russian Government, which may seek to quiet those who speak out against it. He has met his burden of showing there is little likelihood that those relationships could create a risk for foreign influence or exploitation. I find AG ¶ 8(a) applies in this case.

Applicant has been a resident of the United States since 1998. He married a native-born U.S. citizen, became a naturalized U.S. citizen in 2004, and he and his wife have three native-born children, all U.S. citizens. He and his immediate family reside in the United States. He had his Russian passport destroyed. Although he personally renounced his Russian citizenship emotionally and under U.S. law, he has not formally relinquished it under Russian law as it is a long and costly process, requiring that he return to Russia, with a valid Russian passport, to do so. However, he is willing to commence the process, if necessary. He has no foreign financial interests in Russia. He is fully involved in his children’s lives and activities. Applicant and his wife have “such deep and longstanding relationships and loyalties in the U.S., that [they] can be expected to resolve any conflict of interest in favor of the U.S. interest.” I find AG ¶ 8(b) applies in this case.

It is true that, since becoming a U.S. citizen in 2004, Applicant took two trips to Russia to visit his parents and sister. At the time of his 2003 trip to Russia, he was still a Russian citizen, and that trip should have no current security interest.

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 common sense 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 and his "closest family"—his wife, and their three children—are all U.S. citizens, residing in the United States. As such, they are not vulnerable to direct coercion or exploitation, and the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is low. His 80-year-old father, nearly 70-year-old mother, and his 43-year-old sister reside in Russia. While they are more vulnerable to direct coercion or exploitation, because of their age and low political profile, the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is also low.

A Guideline B decision concerning Russia must take into consideration the geopolitical situations in those countries, as well as the dangers existing there. Russia is a diplomatic and strategic partner of the United States in some areas where both countries have mutual interests. Russia is a key partner in the search for peace in the Middle East and resolution of problems with Iraq and Iran. Russia, then a part of the Soviet Union, was an important ally in World War II, and then our greatest antagonist during the Cold War. Russia has a mixed human rights record, and like the United States, has been subject to terrorist attacks. Russia is a known collector of U.S. economic intelligence and proprietary information, but the potential for pressure, coercion, exploitation, or duress based upon Applicant's remaining ties to Russia—his parents and sister without any affiliation or relationship to the Government of Russia—are insufficient to raise a security concern.

As to Applicant's actions in renewing and using his Russian passport on two occasions after he became a naturalized U.S. citizen, they raise several different issues. When Applicant renewed his Russian passport, he had no intention of reflecting a preference for Russia over the United States. At that time, he was unaware of the

security significance of his actions. When he did learn of the significance, Applicant took immediate steps to have his Russian passport destroyed by his FSO, and did so in October 2009, when he surrendered it to his employer's security department and it was destroyed. (See AG ¶¶ 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(5), 2(a)(7), and 2(a)(9).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from the Government's foreign influence 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge