DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

March 30, 2011

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 January 29, 2009, Applicant applied for a security clearance and submitted an e-QIP version of a Security Clearance Application (SF 86).[1] On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) furnished her a set of interrogatories. She responded to the interrogatories on December 14, 2009. On April 19, 2010, DOHA issued a Statement of Reasons (SOR) to her, 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 *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1,

[1] Government Exhibit 1 (SF 86, dated January 29, 2009).

2006) (AG) for all adjudications and other determinations made under the Directive. 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. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on April 24, 2010. In a sworn statement, dated April 30, 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 July 8, 2010, and the case was assigned to me on August 4, 2010. A Notice of Hearing was issued on August 23, 2010, and I convened the hearing, as scheduled, on September 22, 2010.

During the hearing, 2 Government exhibits (GE 1-2) and 11 Applicant exhibits (AE A-I) were admitted into evidence, without objection. Applicant and one other witness testified. The transcript of the hearing (Tr.) was received on October 1, 2010.

Rulings on Procedure

At the commencement of the hearing, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to Ukraine, appearing in four written submissions. 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 Ukraine in publications of the Department of State[2] and the Congressional Research Service.[3]

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,[4] as set forth below under the Ukraine subsection.

[2] U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Ukraine*, dated May 24, 2010; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Human Rights Reports: Ukraine*, dated March 11, 2010; and U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information: Ukraine*, dated April 8, 2010.

[3] Congressional Research Service, Library of Congress, *Ukraine: Current Issues and U.S. Policy*, dated March 5, 2009.

[4] Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). 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).

Findings of Fact

In her Answer to the SOR, Applicant admitted both of the factual allegations in ¶¶ 1.a. and 1.b. of the SOR. Those admissions are incorporated herein as findings of fact.

Applicant is a 40-year-old employee of a defense contractor, and she is seeking to obtain a security clearance, the level of which has not been specified. She has been a self-employed freelance translator, interpreter, and language instructor since 1996,[5] and she has been employed as a translator and linguist by the same government contractor since January 2009.[6]

Applicant was born in 1970 in Ukraine,[7] at a time when Ukraine was still an integral part of the Union of Soviet Socialist Republics (USSR).[8] In June 1992, she received a master's degree in German language and literature from a Ukrainian university.[9] She has been certified as an English – Russian interpreter and translator by the U.S. Department of State, two states, and a professional organization.[10]

In 1990, while still a student at the Ukrainian university, Applicant married her first husband, a native of Ukraine.[11] They were divorced in 1994.[12] Nine months later, she married her second husband, a native of the United States, who was serving as a missionary in Ukraine.[13] Seeking better opportunity, Applicant emigrated from the Ukraine to the United States in October 1996.[14] She became a naturalized U.S. citizen in June 2001.[15] She has two sons, born in 1995 in Ukraine and 1997 in the United States, respectively.[16] Applicant and her second husband were divorced in 2004.[17]

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[5] Applicant Exhibit D (Resume, undated), at 1.

[6] Government Exhibit 1, *supra* note 1, at 6.

[7] *Id.* at 6.

[8] U.S. Department of State, Bureau of European and Eurasian Affairs, *Background Note: Ukraine*, *supra* note 2, at 2.

[9] Government Exhibit 1, *supra* note 1, at 14-15.

[10] Applicant Exhibit D, *supra* note 5, at 1; Applicant Exhibit E (Certificate of Accreditation, dated August 26, 2002); Applicant Exhibit F (Certificate of Qualification, dated May 5, 2005); Applicant Exhibit G-1 (Letter from U.S. Department of State, dated March 15, 2010); Applicant Exhibit G-2 (Letter from U.S. Department of State, dated February 22, 2010); Applicant Exhibit I (Court Interpreter Certification Board Certificate, dated August 20, 2010).

[11] Government Exhibit 1, *supra* note 1, at 26.

[12] *Id*.

[13] *Id.*, at 25; Government Exhibit 2 (Personal Subject Interview, dated March 25, 2009), at 1.

[14] Tr. at 45; Government Exhibit 2, at 1.

[15] Government Exhibit 1, *supra* note 1, at 8.

[16] *Id.* at 29.

[17] *Id.* at 25.

Applicant's parents, both of whom were born in Ukraine at a time when Ukraine was still an integral part of the USSR, still reside in Ukraine.[18] Her father has been retired for approximately a decade.[19] Her mother writes software.[20] Applicant has no siblings.[21] Her parents have no political affiliation,[22] and there is no evidence that they have current or continuing relationships with either the government or intelligence services of either the USSR or Ukraine. One or both of Applicant's parents usually visit her in the United States on an annual basis,[23] and she generally returns to Ukraine to visit them every other year for about one month each visit.[24] They remain connected on a weekly or less frequent basis by telephone or e-mail.[25]

Applicant voted in Ukraine on one occasion before she entered the United States, but since she became a U.S. citizen, she has only voted here.[26] When she became a naturalized U.S. citizen, she took an oath of allegiance to the United States. That oath included the words:[27]

> 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.
> . . .

Believing that she needed to take further action under Ukrainian law to renounce her Ukrainian citizenship, she contacted the Ukrainian Embassy by letter and telephone to do so, but she received no response.[28] Now, it is her understanding that she automatically lost her Ukrainian citizenship when she became a U.S. citizen.[29] She is correct, for one of the grounds for involuntary loss of Ukrainian citizenship is the

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[18] *Id.*, at 27-28; Some details pertaining to Applicant's parents have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

[19] Tr. at 39, 41-42.

[20] *Id.* at 39, 42.

[21] *Id.*

[22] *Id.*, at 40.

[23] Government Exhibit 2, *supra* note 13, at 1.

[24] *Id.*

[25] *Id.*; Tr. at 40.

[26] Tr. at 42-43.

[27] 8 C.F.R. § 337.1(a) (1995).

[28] Government Exhibit 2, *supra* note 13, at 1.

[29] *Id.*

voluntary acquisition of a foreign citizenship,[30] an action taken when she became a naturalized U.S. citizen.

Applicant and her second husband went through a costly divorce and child custody battle. While she ultimately prevailed, with the court giving her full custody and assessing her ex-husband expenses, she has not yet received any money from him.[31] Nevertheless, she has been able to accumulate $900 in savings, has $7,000 in her checking account, and has paid for an automobile.[32] She is currently renting a residence.[33]

When Ukraine achieved independence with the dissolution of the USSR, the apartment[34] in which Applicant, her oldest son, and her parents resided became privatized, and each registered occupant of the apartment was granted an equal ownership share in the property.[35] In 2009, when she was interviewed by an investigator from OPM, Applicant estimated the value of the apartment to be approximately $75,000.[36] In April 2010, the estimated value had decreased to about $40,000 to $50,000.[37] On April 30, 2010, Applicant and her father signed a Deed of Gift of Immovable Property, under which Applicant turned over her one-quarter share of ownership in the apartment, with "all the right title, interest, use, possession whatsoever . . . to have and to hold."[38] By September 2010, the value of the apartment had decreased even further to about $40,000.[39] Applicant's son still owns his one-quarter share of the apartment, worth about $10,000 – a rather insignificant amount.

Applicant's entire life is now wrapped up in the United States. This is where her children are growing up, it is their home, and where they have school, friends, and involvement in sports.[40] She has "built [her] life, career and a life for [her] children here."[41]

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[30] U.S. Office of Personnel Management (OPM), Investigations Service, *Citizenship Laws of the World* (IS-1), dated March 2001, at 206.

[31] Tr. at 44-45.

[32] *Id.* at 44.

[33] *Id.*

[34] The apartment, referred to as a condominium, has been described as having 270 square feet of living area. Applicant's Response to the SOR, dated April 30, 2010, at 1. The structure was built in 1973-74, and has not been renovated for a long time. Tr. at 37-38.

[35] Government Exhibit 2, *supra* note 13, at 3.

[36] *Id.*

[37] *Id.*

[38] Deed of Gift of Immovable Property, dated April 30, 2010, attached to Applicant's Response to the SOR.

[39] Tr. at 37.

[40] Applicant's Response to the SOR, *supra* note 34, at 1.

Character References

One friend, a neighbor since 1997 or 1998, who is an investigator for OPM and other federal agencies, with over 40 years of experience in law enforcement and private security, is fully supportive of Applicant's application for a security clearance. He and his family have frequently interacted with Applicant, her children, and her visiting parents, and he has characterized her as trustworthy and reliable, with good judgment.[42] Another individual, the chair of a university department of world languages, initially had a professional relationship with her, commencing in about 2003, and it broadened into a social relationship as well. Based on his observations and knowledge, he has characterized her as honest, trustworthy, reliable, extremely intelligent, accomplished, and talented, possessing sound judgment.[43] Another individual, a program officer with the U.S. Department of State, has known Applicant professionally since 2009. Based on her observations and knowledge, she has characterized Applicant as being extremely trustworthy, hard working, very intelligent, with excellent judgment.[44] She noted that Applicant was chosen to serve as the interpreter when a U.S. Department of State-sponsored group met with President Barack Obama.[45]

Ukraine

Ukraine has a parliamentary-presidential type of government since becoming independent of the Soviet Union in 1991. It is undergoing profound political and economic changes, as it moves toward a market economy and multi-party democracy. The first "free" elections were marred by government intimidation and electoral fraud. The 2004 presidential election was condemned by the Organization for Security and Cooperation in Europe (OSCE), as flawed by pervasive electoral fraud. The United States and Europe refused to accept the results. The then-opposition candidate, Viktor Yuschenko, was even poisoned with dioxin. Massive demonstrations helped to overturn the former regime's electoral fraud, in what has been referred to as the "Orange Revolution," so named after Viktor Yuschenko's campaign color. Ukraine's Supreme Rada—450-member unicameral parliament—passed a vote of "no confidence" in the government, and the Ukraine Supreme Court invalidated the election results. A re-vote was conducted, and, in January 2005, Yushchenko became Ukraine's new President. Subsequent parliamentary and local elections in 2006 and 2007 complied with international standards.

Having inherited a military force of 780,000 from the USSR, Ukraine is seeking to modernize with an eye toward achieving NATO, rather than the old Soviet, standards. Ukraine has been an active participant in six United Nation peacekeeping missions and

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[41] *Id.*

[42] Applicant Exhibit A (Character reference, dated September 20, 2010); Tr. at 52-57.

[43] Applicant Exhibit B (Character reference, dated September 20, 2010).

[44] Applicant Exhibit C (Character reference, dated September 15, 2010).

[45] *Id.*

has a small number of troops serving in supporting roles with Coalition forces in Iraq. Ukraine's initial foreign policy goals included membership in the World Trade Organization, the European Union, and the North Atlantic Treaty Organization (NATO). However, under its new president, Ukraine adopted a "non-bloc" approach, but will pursue close practical cooperation with NATO. Ukraine has peaceful and constructive relations with all its neighbors. Relations with Russia are complicated by differing foreign policy priorities in the region, energy dependence, payment arrears, disagreement over stationing of the Russian Black Sea Fleet in Sevastopol, and some boundary disputes. Ukraine has consistently supported peaceful, negotiated settlements to disputes. The 2010 presidential campaign commenced with a feud between two former political colleagues, and the eventual election of Victor Yanukovych, the candidate Yushchenko had previously defeated.

President Bush visited Ukraine on April 1, 2008, and praised Ukraine's democratic and military reforms. He noted:[46]

> Ukraine is contributing to every mission of the NATO Alliance, and honoring the ideals that unite the transatlantic community. This week, Ukraine seeks to strengthen its transatlantic ties through a NATO Membership Action Plan. The United States strongly supports your request. . . . [O]ur two nations share a common vision for the future. We seek to advance a cause of freedom, and help all peoples of Europe live together in security and peace.

Domestically, although there remain some serious human rights concerns, with continuing investigations to root out and solve the problems, Ukraine is largely free of significant civil unrest or any organized anti-American domestic political movements. Additionally, freedom of speech and press are guaranteed by law and by the constitution, and authorities generally respect these rights.

There is no evidence that Ukraine is an active participant in economic espionage, industrial espionage or trade secret theft, or violations of export-control regulations.

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."[47] 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

[46] White House Office of the Press Secretary, Press Release: President Bush and President Yushchenko of Ukraine Exchange Luncheon Toasts, Apr. 1, 2008, at www.whitehouse.gov/news/releases/2008/04/print/20080401-4.html. While this information was not included in Department Counsel's request, I take Administrative Notice of these facts on my own initiative.

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

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."[48]

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."[49] 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.[50]

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."[51]

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

[49] "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).

[50] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[51] *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."[52] 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 or 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.[53] Applicant's relationship with her parents in Ukraine are current security 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

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[52] *See* Exec. Or. 10865 § 7.

[53] *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 her family members, who are Ukrainian 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." Also, AG ¶ 8(f) may apply when "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 this instance, Applicant's 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.[54] 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."[55]

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

[54] *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).

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

make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, since the breakup of the USSR, the United States and Ukraine have developed an increasingly warm and friendly relationship, making it unlikely that the Ukraine Government would attempt coercive means to obtain sensitive information. However, it does not eliminate the *possibility* that Ukraine would employ some non-coercive measures in an attempt to exploit a relative. While Applicant's parents still reside in Ukraine, there may be speculation as to "some risk," but that speculation, in the abstract, does not, without more, establish sufficient evidence of a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance. There is no evidence that Applicant's parents are, or have been, political activists, challenging the policies of the Ukrainian Government; that terrorists have approached or threatened Applicant or her parents for any reason; that the Ukrainian Government has approached Applicant; that her parents currently engage in activities that would bring attention to themselves; or that her parents 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 Ukrainian Government, which may seek to quiet those who speak out against it. She has met her burden of showing there is little likelihood that those relationships could create a risk for foreign influence of exploitation. As to her parents in Ukraine, AG ¶ 8(a) applies.

Applicant has been a resident of the United States since 1996. She became a naturalized U.S. citizen, and she and her two children reside in the United States. Now that she surrendered her ownership share in her parents' apartment in Ukraine, she no longer has any foreign financial interests in Ukraine. She is fully involved in her children's lives and activities. Applicant and her children 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." AG ¶ 8(b) applies.

As noted above, when Ukraine achieved independence with the dissolution of the USSR, the apartment in which Applicant, her oldest son, and her parents resided became privatized, and each registered occupant of the apartment was granted an equal ownership share in the property. Applicant deeded her one-quarter interest to the apartment to her father. Her son still owns his one-quarter interest, worth about $10,000 – a rather insignificant amount. That interest is too insignificant to be "used effectively to influence, manipulate, or pressure [Applicant]."

It is true that, since becoming a U.S. citizen in 2001, Applicant has generally taken a trip to Ukraine once every two years to visit her parents. They, in turn, visit Applicant and their grandchildren in the United States every year, and those trips and frequent contact 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 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 and her "closest family"—her two children—reside in the U.S., and they are all U.S. citizens. As such, the children are not vulnerable to direct coercion or exploitation, and the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is low. While she might be susceptible to potential indirect pressures on her parents from Ukraine, under the present circumstances, that possibility is too remote to present a realistic heightened risk.

A Guideline B decision concerning Ukraine must take into consideration the geopolitical situation in that country, as well as the potential dangers existing there. Ukraine is a rapidly developing, multi-party democracy, contributing to NATO Alliance missions. Ukraine previously had aligned itself with the West and applied for NATO membership, an action supported by the U.S. because both nations share a common vision for the future. Recently, Ukraine adopted a "non-bloc" approach, but will continue to pursue close practical cooperation with NATO. It is in Ukraine's interests to maintain friendship with the U.S. to counterbalance Russia, and it is very unlikely Ukraine would forcefully attempt to coerce Applicant through her parents still residing in Ukraine. Furthermore, there is no evidence that Ukraine is an active participant in economic espionage, industrial espionage or trade secret theft, or violations of export-control regulations.

As noted above, Applicant's entire life is now wrapped up in the United States. This is where her children are growing up; it is their home; and it is where they have school, friends, and involvement in sports. She has built her life, career, and a life for her children here. She is well respected by her friends and colleagues for her honesty, integrity, and truthfulness. That she and her parents keep in close contact should not be

considered a negative factor for they freely come to the United States, without restrictions imposed by Ukraine, to visit her and their grandchildren. (*See* AG ¶¶ 2(a)(1) through 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 her 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

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge