



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-07466
SSN: — — ----)
)
Applicant for Security Clearance)

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: *Pro se*

January 13, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern posed by either his Russian wife, his stepdaughter, or his Ukrainian friends. Clearance is denied.

Statement of the Case

On August 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 7, 2010, admitting all of the allegations, and requesting an administrative determination. On September 20, 2010,

Department Counsel requested a hearing. I received the case assignment on October 1, 2010. DOHA issued a notice of hearing on October 7, 2010, scheduling it for October 28, 2010. I held the hearing as scheduled. During the hearing, I received four Government exhibits, marked as Government Exhibits (GE) 1 through 4, nine Applicant exhibits marked as Applicant Exhibits (AE) A through I, and Applicant's testimony. Also, at the Government's request, I took administrative notice of the adjudicative facts set forth in 13 documents, marked as Hearing Exhibit (HE) I through XIII. DOHA received the hearing transcript (Tr.) on November 4, 2010.

Findings of Fact

Applicant is a 54-year-old married man with no children. Applicant and his current wife have been married since July 2006. (AE 2 at 5)

Applicant served in the United States (U.S.) Navy from 1974 to 1980. He was discharged honorably. (AE A) In 1989, Applicant completed college, earning a bachelor of science degree in the field of physical sciences. (AE B)

Applicant has spent his career working in a variety of science and engineering positions. (*see generally*, GE 1 at 10-16) Since 2009, he has worked for a defense contractor as a radar test engineer. (*Id.* at 10)

Applicant is fascinated by Slavic culture and Slavic architecture (AE F at 18-21, 24-27, 31; Tr. 48) Over the years, he has taken Russian classes at a local community college. He has visited Russia once and visited Ukraine multiple times. Applicant's visit to Russia occurred in 2000. He travelled there to sightsee and with the intention of marrying a woman to whom he had been referred through a matchmaking service. (Tr. 90)

Applicant's returned to the U.S. with the woman he met through the dating service. He married her shortly after returning to the U.S. (Tr. 92) They separated two weeks after the marriage, and the woman returned to Russia. (Tr. 94) They were legally divorced in 2002. (Tr. 92)

Between 2002 and 2003, Applicant visited Ukraine twice. (AE 1 at 37) Each time, he opted to rent an apartment rather than stay at a hotel. (Tr. 98) On his second trip, in November 2003, Applicant befriended a woman and her two teenage daughters. (Tr. 98) They remained friends after Applicant returned home.

In early 2005, Applicant received news that his Ukrainian friend was critically ill with brain cancer. That May, he returned to Ukraine and visited her at the hospital. He then promised her that after her death, he would support her children financially. (Tr. 51)

Shortly after Applicant returned to the U.S., his Ukrainian friend died. Since then, he has kept his promise, sending her daughters two to three hundred dollars per month, and periodically sending them clothing. (Tr. 63) He also provides financial support to the

girls' aunt, who is now their legal guardian. Specifically, he helped finance dental school tuition for the aunt's son. (Tr. 66, 67)

Applicant has returned to Ukraine four times since 2004 to visit his friends. His most recent trip was in early 2010. He loves his Ukrainian friends and considers them his surrogate family. (Tr. 48, 59) His relationship with them "is more important to [him] than getting a clearance." (Tr. 52)

Currently, the oldest of the two Ukrainian girls lives in the U.S. on a work visa. (AE C) She works part-time at two jobs as a waitress and a maid.

Applicant's current wife was born and raised in Russia. She immigrated to the U.S. in 2004. (GE 2 at 5) Applicant met her in 2005 through his Russian professor, with whom she was then working as a nanny. After dating for a year, Applicant married her.

Applicant's wife earned the U.S. equivalent of an associate's degree in the field of culinary arts in 1992. (AE D) Since marrying Applicant, she has been a homemaker. She is a permanent U.S. resident. (AE I)

Applicant's parents-in-law are deceased. He has two adult stepchildren, a man and a woman, who live in Russia. Applicant's stepson works as a mechanic for an oil company where he lays pipelines. (Tr. 96) Applicant does not know whether the oil company for whom his stepson works is state-owned. Applicant has never met his stepson, and has only talked to him on three or four occasions. (Tr. 96)

Applicant's stepdaughter is unemployed. (Tr. 97) She and her three-year-old daughter recently visited Applicant and his wife in the U.S., staying for three months and living at their home. When Applicant's stepdaughter is home in Russia, they usually communicate with her using Skype. (Tr. 89) Applicant characterized his relationship with his stepdaughter as good. (Tr. 44)

At the hearing, Applicant engaged in a profane tirade, characterizing the responsibility of maintaining a security clearance as "a . . . pain in the . . . ass." (Tr. 80) During his closing argument, he described maintaining a security clearance as "a big hassle," and stated that he did not trust the U.S. government. (Tr. 123)

Russia has an aggressive, ongoing intelligence collection program targeting the U.S. (HE V at 1) Its espionage focuses on military technology and gas and oil industry expertise. (*Id.* at 2) Over the past few years, Russia's foreign policy objectives have grown increasingly inimical to U.S. interests. (HE X) In June 2010, the U.S. Department of Justice arrested ten alleged Russian spies who had been carrying out long-term deep-cover assignments in the U.S. (HE 12) The following month, all ten defendants pleaded guilty to conspiracy to act as an agent of a foreign government within the U.S., and were immediately expelled. (HE 13)

Although Russia has made some progress in respecting human rights since the breakup of the Soviet Union, significant problems remain. For example, several human rights activists and journalists have been killed under mysterious circumstances over the years. (HE VI at 2) The press has, at times, been brutally suppressed. (*Id.* at 29) Russian law requires telephone and cellular companies to grant its Ministry of Internal Affairs and Federal Security Service 24-hour remote access to their client databases. (HE 2 at 16) Also, these agencies require Internet companies to provide dedicated lines to enable tracking of private e-mail communications. (*Id.*) It is not unusual for foreigners to become victims of harassment, mistreatment, or extortion by Russian law enforcement officials. (HE VIII at 8)

Ukraine is a multi-party republic with a parliamentary/presidential system of government. (HE II at 1) The Ukrainian constitution provides citizens the right to change their government peacefully, and citizens exercised this right in practice through “periodic, free, and fair elections based on universal suffrage.” (HE II at 15) Over the years, it has been gradually moving from its Soviet past to a market economy, integrating into the Euro-Atlantic sphere of influence, and developing its nascent democracy. (GE III at 1)

In April 2008, the U.S. and Ukraine signed a roadmap for strengthening their ties. (HE IV at 13) The roadmap covers several areas including trade, investment, energy security, defense cooperation, and technology cooperation. (*Id.*) U.S. aid to Ukraine ranged between 60 and 96 million dollars between 2005 and 2009. (*Id.* at 14) Among other things, the aid funded efforts to increase Ukraine’s “interoperability with U.S. and NATO [North Atlantic Treaty Organization] forces.” (*Id.* at 15)

Russia does not approve of Ukraine’s integration into Western European military and economic alliances. (HE IV at 8) Nevertheless, Ukraine has continued to pursue these ties.

Ukraine’s evolution to a representative democracy supportive of the rule of law has been most successful as to its implementation of fair elections and respect for an independent media. (*Id.* at 11) However, Ukraine continues to struggle with fighting corruption, establishing the rule of law at all levels of government, and constitutional reform. (*Id.*) Police brutality is widespread. As independent media in Ukraine grow stronger, they are increasingly exposing government misconduct. (*Id.* at 8-10)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors

listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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” (AG ¶ 6). Moreover, “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” (*Id.*).

Russia’s continued disrespect for human rights, its increasingly inimical stance toward U.S. foreign policy objectives, and its ongoing espionage program that targets the U.S. render 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” clearly applicable to Applicant’s relationship with his wife and stepchildren. Although Ukraine has a growing relationship with the U.S., Applicant’s testimony that he does not trust the U.S. government, and values his contact with his surrogate family more than his job, renders AG ¶ 7 applicable to Applicant’s surrogate family, also.

Applicant has never met his Russian stepson and has only talked with him on three to four occasions. AG ¶ 8(c), “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation,” applies to Applicant’s relationship with his stepson.

Conversely, Applicant stays in frequent contact with his stepdaughter. AG ¶ 8(c) does not apply to Applicant's relationship with his stepdaughter.

None of the remaining mitigating conditions apply. Applicant has failed to mitigate the foreign influence security concern.

Whole-Person Concept

Under the whole-person concept, 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.

The good character that Applicant demonstrated by following through on a promise to provide financial support to two Ukrainian girls upon their mother's death is outweighed by his troubling testimony and flippant attitude regarding the maintenance of a security clearance. Upon considering this case in the context of the whole person, I conclude Applicant has failed to mitigate the security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
SOR subparagraphs 1.a - 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge