



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



In the matter of:)
)
) ISCR Case No. 09-08047
)
Applicant for Security Clearance)

Appearances

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

January 31, 2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen, maintains dual citizenship with Russia. Concerned about the repercussions to himself and his family members who still reside in Russia, he is unwilling to surrender his Russian passport or renounce his Russian citizenship. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on May 25, 2011, the Defense Office of Hearings and Appeals (DOAH) issued a Statement of Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant

¹ This case is adjudicated under Executive Order (EO)10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaces the guidelines in Enclosure 2 to the Directive.

Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual bases for the action under the security guidelines known as Guideline B for foreign influence and Guideline C for foreign preference.

Applicant timely answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on August 25, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 14, 2011. He did not object to the items appended to the Government's brief. Items 1 through 6 were admitted to the record as the Government's Exhibits (GE) using the same numbers for identification. Applicant submitted a response to the FORM dated, September 30, 2011, which was admitted as Applicant's Exhibit (AE) A, without objection from Department Counsel. The case was assigned to me on November 23, 2011.

Evidentiary Rulings

Request for Administrative Notice

In the FORM, Department Counsel requested that I take administrative notice of certain facts about Russia. Applicant did not object to the request, and it was granted. The documentation supporting the facts cited in the FORM, Items 7 through 17, are not admitted into evidence, but are included in the record as Hearing Exhibits (HE) 7 through 17. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 39-year-old employee of a government contractor. He was born in Moscow, Russia, and immigrated to the United States under an "alien of extraordinary ability" program in 1996. Applicant worked as a translator until he went to graduate school at a prominent U.S. university in 1998. Between 2006 and 2008, he worked as a government contractor for another federal agency and held a public trust clearance.²

Although he became a naturalized citizen in 2002, Applicant maintains dual citizenship with Russia. He maintains a valid Russian passport, which does not expire until 2013. He uses the passport to enter and exit Russia when he visits his family: his parents, his sister and her husband, and his father-in-law.³ Applicant's wife, also a naturalized U.S. citizen and his U.S.-born children also hold dual citizenship with Russia. Applicant and his family have no intention of surrendering their Russian passports or renouncing their Russian citizenship. According to Applicant, the Russian government has a reputation for being "vindictive." He is concerned that surrendering his passport or renouncing his Russian citizenship could be construed by the Russian government as a hostile act. He fears that Russian authorities would retaliate by

² GE 5.

³ Applicant's mother-in-law is now deceased.

denying him entry into the country, thus cutting him off from his family, or consider him a traitor, making life difficult for his family members who live there.⁴

Applicant's mother, now retired, worked for a company in the Russian defense industry. His father currently works for a government-owned entity in the defense industry. Applicant believes that both of his parents have held security clearances with the Russian government. Applicant's parents own their home; Applicant and his sister hold an ownership interest granted by statute because they lived in the property at one time. The market value of this property interest fluctuates vastly. Applicant communicates with his parents weekly via Skype, a video telephone service. Because his parents are concerned that the Russian government is monitoring their conversations with him, they limit their conversations with Applicant to personal matters. Applicant visits his parents in Russia every two years. At least one of his parents visits him in the United States every year.⁵

Neither Applicant's sister nor her husband has connections to the Russian government. Applicant communicates with his sister using Skype once per month and by e-mail on a daily basis. She has been to the United States to visit Applicant once, but they usually see each other when Applicant visits Russia. Applicant's father-in-law is a retired employee of the Russian government. Applicant communicates with his father-in-law during his visits to Russia and by Skype every few weeks. In addition, Applicant has a host of extended family who are residents and citizens of Russia, but their contact is limited. Applicant also maintains contact with a few friends who reside in Moscow. He has a close friend that is a dual U.S. – Russian citizen who lives in the United States. Applicant also has contacts with other Russian citizens through his anonymous Russian-language lifestyle blog.⁶

Russia⁷

The Russian Federation is composed of 21 republics. The government consists of a strong president, a prime minister, a bicameral legislature and a weak judiciary. 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. It is a nuclear superpower that continues to develop politically, socially, and economically.

The United States and Russia share certain common strategic interests. Of mutual interest to the United States and Russia are counterterrorism and the reduction of strategic arsenals. U.S.-Russian relations have often been strained. The Russian Federation's intelligence capability is significant and focuses on collection of information from the United States. Russia has targeted U.S. technologies and has sought to obtain

⁴ GE 2, GE 3, GE 5.

⁵ GE 5.

⁶ GE 5.

⁷ HE 7 – 17.

protected information from them through industrial espionage. Russian espionage specializes in military technology and gas and oil industry expertise. As of 2005, Russia and China were the two most aggressive collectors of sensitive and protected U.S. technology and accounted for the majority of such targeting. Russia is a leading arms exporter, with major sales of advanced weapons and military-related technology to China, Iran, Syria, and Venezuela. In 2010, Russia continued to increase their intelligence gathering efforts and intelligence capabilities directed against the United States interests worldwide through espionage, technology acquisition, and covert actions. Also in 2010, the United States Department of Justice announced arrests of ten alleged secret agents for carrying out long-term, deep-covered assignments on behalf of Russia.

Russia has recognized the legitimacy of international human rights standards, but human rights abuses continue. The U.S. Department of State reports allegations that Russian government officials and others conduct warrantless searches of residences and other premises and electronic surveillance without judicial permission. This surveillance includes Ministry of Internal Affairs and Federal Security Office monitoring of internet and e-mail traffic. Additionally, Russian law enforcement agencies have legal access to the personal information of users of telephone and cell phone services.

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 are to be used 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

The security concern for Foreign Influence is set out in AG ¶ 7 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Department Counsel raised three that are potentially applicable in this case:

(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;

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Of these, only AG ¶¶ 7(a) and (d), apply.

Applicant's parents, sister, brother-in-law, father-in-law, and several extended relatives and friends are residents and citizens of Russia. The mere possession of close ties with family members living in Russia is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Applicant has demonstrated that he is bound to his family by strong bonds of affection. The heightened risk raised by his familial connections to Russia is illustrated through Applicant's concerns about the treatment of his family if he were to surrender his Russian passport or renounce his Russian citizenship. Seemingly, the risk of negative treatment could be triggered if Applicant's wife or children changed their status as Russian citizens.

In addition to the strong bonds of affection Applicant has for his family, the professional positions of his parents also create a heightened risk. His father works for a government-owned entity in the Russian defense industry and he possibly holds a Russian security clearance. Applicant's mother retired from a position in the defense industry. His parents' concern that the Russian government may monitor their conversations with Applicant is well-founded, plausible, and of great security significance as the State Department notes allegations that Russian law enforcement monitors electronic and telephonic communications of its citizens.

Applicant admits that he owns a share of his parent's primary residence in Moscow. Although property interests in a foreign country may be disqualifying, the Government has not established that property interest is substantial to Applicant's current financial situation or that the property interest is a potential source of influence or exploitation beyond its mere existence. Applicant's strong bonds to his family, not the home they live in, raise the true security concerns in this case.

The following mitigating conditions under AG ¶ 8 are potentially applicable:

(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.,

(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

(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.

None of these mitigating conditions apply. Applicant's close familial relationships and the professions of his parents prevent a finding that Applicant could not be placed in a position to choose between the interests of the United States and Russia. These factors also prevent a finding that there is no conflict of interest between Applicant's U.S. interests and his strong familial ties to Russia. Also, his contacts with his nuclear family, including his father-in-law, cannot be constructed as casual or infrequent. However, this description aptly describes Applicant's contacts with his extended family and friends living in Russia.

Guideline C, Foreign Preference

As described in AG ¶ 9, a security concern may arise under the following circumstances:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The following disqualifying condition under AG ¶ 10 is applies to this case:

(a) exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member.

Since becoming a naturalized U.S. citizen, Applicant continues to use his Russian passport on his travels to that country.

Because Applicant has no intention of surrendering his foreign passport or renouncing his Russian citizenship, none of the mitigating conditions available under AG ¶ 11 are applicable to this case. Applicant's contention that he uses his Russian passport only when traveling to that country has little probative value. As the Appeal Board noted, "[t]he negative security significance of acts indicative of foreign preference is not negated or diminished merely because an applicant engages in those acts for personal reasons or for personal convenience."⁸ In this case, Applicant's use of his passport is more than an act of convenience; he also uses the passport and maintains his dual citizenship as a safeguard for himself and his family residing in Russia. He is

⁸ ISCR Case No. 99-0254 at 3 (Feb. 6, 2000).

concerned that not using the passport or renouncing his citizenship would draw unwanted attention from the Russian government to himself and his family.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept. In the 16 years since Applicant immigrated to the United States, he has married and started a family. While this is strong evidence of Applicant's ties to the United States, these facts alone are not sufficient to mitigate the foreign influence and foreign preference concerns raised in this case. Under the "clearly consistent with the national interest" standard, an applicant has a heavy burden of demonstrating extenuation or mitigation of facts with negative security significance. Because he failed to meet his burden, I have no choice but to resolve any doubt about Applicant's security worthiness in favor of the national security.⁹

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 C:	AGAINST APPLICANT
Subparagraphs 1.a.-1.b.:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a.-2.e.:	Against Applicant
Subparagraphs 2.f.-2.g.:	For Applicant
Subparagraphs 2.h.-2.i: ¹⁰	For Applicant
Subparagraphs 2.j.-2.k.:	For Applicant

⁹ ISCR Case No. 99-0601 at 6 (App. Bd. Jan. 30, 2001); ISCR Case No. 99-0511 at 8-9 (App. Bd. Dec. 19, 2000); ISCR Case No. 98-0252 at 7 (App. Bd. Sept. 15, 1999); *Dorfmont v. Brown*, 914 F.2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (no presumption in favor of granting or continuing a security clearance); Directive, Item E2.2.2. (any doubt must be resolved in favor of national security).

¹⁰ SOR ¶ 1.b. alleges that Applicant's parents are residents and citizens of Russia. SOR ¶¶ 1.h. and 1.i. allege the specifics of his parents' professional histories. The facts concerning Applicant's parents' work histories are considered in the analysis of the applicability the Guideline B disqualifying conditions. As such, the two allegations are considered duplicative of the allegation made in SOR ¶ 1.b. When the same conduct is alleged more than once under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I find SOR ¶¶ 1.h. and 1.i. in Applicant's favor.

Conclusion

In light of all of the circumstances, 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.

Nichole L. Noel
Administrative Judge