



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



In the matter of: )  
)  
) ISCR Case No. 09-08569  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

January 24, 2011

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant married a Russian citizen, whom he met online in January 2005. Foreign influence concerns are not fully mitigated because of his spouse’s academic position and expertise in Russia before her U.S. immigration, and her close ties to family members living in Russia. Clearance denied.

**Statement of the Case**

On April 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (Foreign Influence) that provided the basis for its preliminary decision to revoke his security clearance. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR allegations on May 7, 2010, and he requested a hearing. On June 28, 2010, the case was assigned to me to consider whether it is clearly consistent with the national interest to continue a security clearance for Applicant. On July 2, 2010, I scheduled a hearing for July 22, 2010.

I convened the hearing as scheduled. Before the introduction of any evidence, the Government requested administrative notice of certain facts pertinent to Russia and Ukraine. The Government also moved to amend the SOR to reflect Applicant's ties with Ukraine, based on information provided in Applicant's answer. Applicant did not object to the motions. I amended the SOR and agreed to take administrative notice of certain facts pertinent to the Russian Federation and to Ukraine, and their respective foreign relations, including with the United States, *infra*. Two Government exhibits (Ex. 1-2) and eight Applicant exhibits (Ex. A-H) were entered into evidence at the hearing without objection. Applicant also testified, as reflected in a transcript (Tr.) received on July 30, 2010.

## **Procedural and Evidentiary Rulings**

### **SOR Amendment**

At the hearing, Applicant moved to amend the SOR to delete from SOR 1.c the reference to the foreign citizenship and residency of Applicant's brother-in-law, and to add a new subparagraph SOR 1.f alleging the Ukrainian citizenship and residency of Applicant's brother-in-law. SOR 1.c was amended without objection, to read as follows:

1.c. Your mother-in-law is a citizen and resident of Russia.

And a new subparagraph was added without objection, to read as follows:

1.f. Your brother-in-law is a citizen and resident of Ukraine.

### **Administrative Notice**

On June 16, 2010, in two separate motions, Department Counsel requested administrative notice of certain facts relating to Russia and Ukraine, and their respective foreign relations, including with the United States. The Government's requests were based on publications from the U.S. State Department,<sup>1</sup> the Congressional Research Service,<sup>2</sup>

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<sup>1</sup>For information pertinent to Russia, see *Background Note: Russia*, dated April 2009; *2009 Human Rights Report: Russia*, dated March 11, 2010; *Russian Federation Country Specific Information*, dated August 6, 2009; *Chapter 2, Country Reports: Europe and Eurasia Overview, Country Reports on Terrorism 2008*, dated April 30, 2009; and *The Current Situation in Georgia and Implications for U.S. Policy*, dated September 9, 2008. For information pertinent to the Ukraine, see *Background Note: Ukraine*, dated May 24, 2010; *2009 Human Rights Reports: Ukraine*, dated March 11, 2010; and *Ukraine Country Specific Information*, dated April 8, 2010.

<sup>2</sup>See *Russian Political, Economic, and Security Issues and U.S. Interests*, dated January 29, 2010, and

and the Office of the National Counterintelligence Executive.<sup>3</sup> Pertaining to Russia only, the Government also based its request on statements for the record by the Director, Defense Intelligence Agency,<sup>4</sup> and the Director of National Intelligence.<sup>5</sup> The Government's formal request and the attached documents were not marked as exhibits, but they were included in the record as administrative notice documents. Applicant was provided a copy of the documents for administrative notice before his hearing. At the hearing, the Government reiterated its request for administrative notice, and Applicant did not object. I took administrative notice of certain facts pertaining to Russia and Ukraine, as set forth in the Findings of Fact.

### **Findings of Fact**

The SOR as amended alleged that Applicant's spouse, whom he met online in about 2005, is a dual citizen of Russia and Israel (SOR 1.a and 1.b); that Applicant's mother-in-law and stepson are resident citizens of Russia (SOR 1.c and 1.d); that Applicant traveled to Russia in at least October 2006 and February 2008 (SOR 1.e); and that Applicant's brother-in-law is a resident citizen of Ukraine (SOR 1.f). Applicant acknowledged his spouse's Russian citizenship, but explained that his spouse did not consider herself to be a citizen of Israel. While she immigrated to Israel in 2000 to join her first husband, she did not acquire Israeli citizenship by choice and she returned her expired Israeli passport to the Israeli embassy. Applicant admitted the Russian citizenship and residency of his mother-in-law and stepson, and the Ukrainian citizenship and residency of his brother-in-law. Applicant also acknowledged his travels to Russia, in 2006 to meet his spouse's family and see the university where she was a professor, and in 2008 to marry his spouse. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 63-year-old lead software systems engineer. Since 1988, he has worked for his current employer, a company tasked with the operation and oversight of three federally-chartered and funded research and development centers. He holds a secret clearance for his present duties involving a military program, and he seeks to retain that clearance. (Ex. 1, A, C.)

Applicant was twice married and divorced before his current marriage in February 2008. He has two adult children from his first marriage. (Ex. 1, 2.) Around January 2005,

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*Ukraine: Current Issues and U.S. Policy*, dated March 5, 2009.

<sup>3</sup>See *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005*, dated August 2006, and *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, FY 2007*, dated September 10, 2008.

<sup>4</sup>See *Annual Threat Assessment*, Statement before the Committee on Armed Services, United States Senate, March 10, 2009.

<sup>5</sup>See *Annual Threat Assessment of the US Intelligence Community for the Senate Select Committee on Intelligence*, February 2, 2010.

while he was still cohabiting with, but emotionally estranged from, his second wife, Applicant became interested in traveling to Eastern Europe. He joined a dating website that had a public chat room thinking that he would meet some people in that area. (Tr. 25-26.) He was befriended on the chat site by a Russian female (his current spouse). Divorced with a grown son, she was born in Azerbaijan but was a resident citizen of Russia, where she obtained her university studies through the doctoral level. (Ex. 1, E.) In 1993, she began employment as an assistant professor and faculty head in the cultural studies department of a state university in Russia. (Ex. 1, 2, E, G.) In 1998, her then husband immigrated to Israel. She stayed behind in Russia to care for their son until he finished his schooling. In 2000, she joined her then husband in Israel.<sup>6</sup> Two years later, she and her first husband separated. Around June 2002, she returned to Russia and resumed her academic position. In 2006, she traveled briefly to Israel to finalize her divorce. (Answer; Ex. 2, G.) So that her real property interest in Russia would not be included in the divorce, she apparently deeded ownership of her two-bedroom flat to her son. (Tr. 40.)

By mid-2005, Applicant had four or five times weekly contact with this Russian national. (Tr. 27-29.) Applicant told her that he was an engineer, and at least initially, she was unaware that he worked for a defense contractor. (Tr. 28.) She shared with him that she was an art and architectural historian. (Tr. 29.)

At Applicant's invitation, he and the Russian national rendezvoused in Italy in July 2005, where they spent six or seven days sightseeing. (Ex. 1, 2, G; Tr. 30.) He paid for their lodging. In April 2006, they spent nine days in Spain together. (Ex. 1, 2, G; Tr. 31.) In October 2006, Applicant traveled to Russia for two weeks to see her. He stayed in her home for the first week, and he registered his private stay with the local police as required by Russian law. (Tr. 32.) The second week, they traveled to see her son and his family, with whom they spent about three hours. (Ex. 1, 2; Tr. 31-32.)

In late November 2006, Applicant informed his chief engineer that he was involved with a Russian national and intentions might become serious in the next year or so. He asked for guidance as to whether he was jeopardizing his clearance for his employment because of that relationship. (Ex. C; Tr. 52.) On December 4, 2006, he was informed by a security manager that his relationship with a Russian national was not a reportable incident

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<sup>6</sup>The SOR alleged that Applicant's spouse holds citizenship with Israel as well as Russia. Applicant told a Government investigator in July 2009 that his spouse resided in Israel for two years during her first marriage, and that she applied for dual citizenship with Israel. However, she was unaware whether her Israeli citizenship was still valid. (Ex. 2.) In response to the SOR, Applicant indicated that his spouse lived in Israel with her first husband for 1.5 years; that Israel automatically granted her Israeli citizenship after one year of residency; that she had an internal Israeli identification card that was stolen in 2006, and an Israeli passport that has expired. With citizenship a prerequisite to obtaining a passport, Applicant held Israeli citizenship at one time. However, it is unclear whether she still holds that citizenship. The certification of dissolution of marriage from her first husband lists her as having only Russian citizenship. Similarly, Applicant indicated on his petitions for her U.S. immigration that she has only Russian citizenship. (Ex. G.) Department Counsel indicated at Applicant's hearing that the Government was not concerned about his spouse's Israeli citizenship, given his spouse exercised that citizenship for only a short time during her prior marriage. (Tr. 15.) The issue of her Israeli citizenship does not appear to raise a current security concern and will not be further addressed.

in itself because he held no higher than a secret clearance. But the relationship would be reportable in the event of any suspicious contacts, or if they were to marry. (Ex. D; Tr. 51.)

From late March to mid-April 2007, Applicant and this Russian national spent 14 days together in France. (Ex. 2, G.) From July 5, 2007 through September 5, 2007, Applicant hosted her in his home in the United States. (Ex. H.) They were seriously contemplating marriage, and she wanted to see what living in the United States might be like. (Tr. 33.) She returned to the United States for the holidays from December 21, 2007 through January 10, 2008, and Applicant took her to meet his brother. (Ex. H; Tr. 33.) Applicant and his second wife were granted a divorce in mid-January 2008. (Ex. 1, G.)

In February 2008, Applicant traveled to Russia for their wedding. He and his spouse married in a civil ceremony attended by her son and his wife, a cousin of his spouse, and some friends of his spouse. (Ex. 1, 2, G; Tr. 34-35, 41, 56.)

After a three-week stay in Russia with his new spouse, Applicant returned to the United States in early March 2008 while his spouse remained in Russia and in her academic position. (Ex. 1, G, H.) Applicant indicates that on his return, he reported his foreign marriage to his employer as required. (Tr. 52.) In mid-March 2008, Applicant filed an alien spouse (I-130, K-3 non-immigrant) petition for her U.S. immigration. In early April 2008, Applicant filed an alien fiancée (I-129F) petition for his spouse.<sup>7</sup> On June 23, 2008, U.S. immigration approved both petitions. The fiancée petition was valid through October 23, 2008. (Ex. G, H.) She encountered no problems with Russian authorities concerning her intended emigration to the United States, but she was grilled about her intentions by U.S. Embassy officials during her immigration interview. (Tr. 51, 53-54.)

At the request of his employer, Applicant completed an application for continued eligibility for a secret clearance on July 10, 2008. He disclosed his marriage in Russia, and his spouse's Russian residency and dual citizenship with Russia and Israel. He also indicated that his stepson and his mother-in-law were resident citizens of Russia. His father-in-law was deceased. (Ex. 1.)

In mid-October 2008, Applicant's spouse immigrated to the United States on a U.S. K-1 visa and with a Russian passport issued on November 3, 2006 and valid until November 3, 2011. (Ex. 2, G; Tr. 36.) A well-published academic in her field in Russia,<sup>8</sup> she indicated on her curriculum vitae, which she prepared after she arrived in the United States in the hope of securing a university position here (Tr. 64.), that she was involved in ongoing part-time research consulting work for a department of culture in Russia. (Ex. E.) In March 2009, she was granted conditional residency in the United States. Applicant's

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<sup>7</sup> Applicant's spouse was listed solely as a citizen of Russia on petitions for U.S. immigration. (Ex. G.)

<sup>8</sup> According to her curriculum vitae (Ex. E.) and Applicant's testimony (Tr. 50.), Applicant's spouse received several academic distinctions (awards) for her work in Russia, including from the Russian university where she was previously tenured. From a review of her curriculum vitae, it does not appear that her academic career had any security, military, or intelligence implications.

spouse was notified that she and Applicant had to petition jointly for removal of her conditional status within 90 days preceding the second anniversary of her conditional residency, or she would be subject to deportation. (Ex. 2.)

As of December 2008, Applicant's spouse had once monthly telephone contact with her mother, who is a retired schoolteacher living in Russia. In August 2009, Applicant told a Government investigator that his spouse had no ongoing contact with her mother. As of July 2010, his spouse called her mother about once a month. (Tr. 48.) Since his mother-in-law speaks only Russian, Applicant has had no direct communication with her. He has never met her. (Ex. 2; Tr. 47-48.) Her mother receives a retirement benefit from her work as a teacher in Azerbaijan. (Tr. 47-48.)

Applicant's stepson is head of technology for an Internet software company in Russia. Applicant believes his stepson has no affiliation with the Russian government. His stepson has traveled to the United States several times for business, including in March 2010 when he came for a conference. He had a brief one-day stay with Applicant and his mother during that trip. (Tr. 42.) In June 2010, Applicant's spouse drafted a will bequeathing to her son any and all property and interests that she might own or otherwise be entitled to in Russia at the time of her death.<sup>9</sup> All other property and interests not located in Russia were willed to Applicant, or if he predeceases her, to her son. (Ex. F.) Applicant's spouse has weekly telephone contact with her son. (Ex. 2; Tr. 44.) They converse in Russian so Applicant cannot be sure of the nature of their conversations. His stepson's proficiency with English is better than his spouse's, at least grammatically, because his stepson studied English in college. (Tr. 73-75) Applicant does not believe that his stepson knows about Applicant's employment other than that Applicant is an engineer. (Tr. 42.) His stepson's wife, who is a native Russian citizen, has her doctorate degree in biology. She was not working outside the home as of July 2010. (Tr. 45.) Applicant's stepson and his wife have two children under age five. Applicant's spouse sends holiday gifts, usually clothing, to her grandchildren. (Tr. 44.) On occasion, Applicant's stepson has purchased items online that he has delivered to Applicant's U.S. address for Applicant or his spouse to mail to Russia. (Tr. 44-45.)

Applicant's spouse has a brother who is a resident citizen of Ukraine. He had been employed as a ship captain by a U.S. oil company, but is no longer. Applicant is aware only that his brother-in-law works in the Caspian Sea. (Tr. 48-49.) Applicant told a U.S. Government investigator in August 2009 that neither he nor his spouse had any contact with her brother. In February 2010, Applicant informed DOHA that his spouse had monthly telephone contact with her brother. (Ex. 2.) As of July 2010, her contact with her brother was once a month to once every two months. Applicant has never met or conversed with his brother-in-law apart from exchanging greetings on one occasion. (Tr. 48-49.)

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<sup>9</sup>Applicant believes his spouse has open bank accounts in Russia but he is unaware of them. (Tr. 40.) In response to whether his spouse received any benefit from the Russian government related to her employment, Applicant stated, "Nothing more than anybody else, I mean just like our social security system, as you work, you accrue points." (Tr. 39.) The record is unclear of the amount of her benefit or when it would be paid to her, if she was not already receiving funds.

Applicant's spouse contacts her cousin, a nurse in Russia, about four times a year, usually by email. (Tr. 56.) Applicant's spouse has ongoing friendly relations with three other Russian resident citizens: a retired seamstress, with whom she has contact "on a regular basis" (Tr. 56.); a female owner and director of a private elementary school in Russia, with whom she had corresponded about now every two weeks but now contacts about once a month by email; and this friend's husband, who is a professor at the university where Applicant's spouse had tenure before her immigration to the United States. (Ex. 2; Tr. 56-58.) This married couple attended Applicant's wedding in Russia. (Tr. 58). Applicant denies any ongoing relations with his spouse's cousin or her friends. (Ex. 2.) They have been told that Applicant works as an engineer. He believes that these foreign nationals do not know for whom he works. (Tr. 58-59.)

Applicant does not believe that his spouse or any member of her family was ever affiliated with the Communist Party in Russia. Applicant testified that his spouse was once told how to vote in a Russian election, and she submitted a blank ballot on that occasion. (Tr. 49-50.)

Applicant has not returned to Russia since his wedding. His spouse has not been to Russia since she immigrated to the United States in October 2008, and she does not have any plans to travel to Russia in the foreseeable future. (Tr. 39.) She is eligible to apply for removal of her conditional status in 2011, and to apply for U.S. citizenship in 2012. Applicant believes she intends to become a U.S. citizen. (Ex.2; Tr. 50-51.) She completed an eight-week course of study and was in her last day of an internship to become a dental assistant in the United States. (Tr. 72.)

Applicant did not encounter any problems with Russian authorities during his two trips to Russia. To his knowledge, no one from the Russian government or military has contacted his spouse, his stepson, or stepson's spouse to inquire about his employment. (Tr. 50.) Applicant has considered the possibility of undue foreign influence and intends to contact security personnel at work and follow their instructions in the case of any improper inquiry by Russian authorities. (Tr. 53, 69.) He does not intend to travel again to Russia. (Answer.)

As of July 2010, Applicant's work for his employer involved foreign military sales. (Ex. B; Tr. 70-71.) He has received relevant monthly security training on issues such as terrorism and interfacing with foreigners. His work does not involve Russia because "that would be a conflict of interest." (Tr. 70-71.) At his mid-year assessment, Applicant had met his work objectives and provided excellent systems engineering support on an international program. (Ex. B.) During his tenure at the company, Applicant has demonstrated technical capability and initiative. (Ex. A.)

After reviewing the U.S. Government publications and statements for the record concerning Russia and Ukraine, and their respective foreign relations, I take administrative notice of the following facts:

## **Russian Federation**

Russia is a vast and diverse federation consisting of 84 administrative units. Power is concentrated in the executive branch, primarily in the president who appoints the prime minister with parliament's approval. Russia's bicameral legislature consists of a compliant State Duma (lower house), dominated by a pro-government party, and a weaker Federation Council (upper house). Political elites have taken the helm of many of Russia's leading economic enterprises as media and energy sector assets considered strategic by the Russian government have been re-nationalized.

Russia has an uneven human rights record. The March 2008 presidential election was criticized by international observers as unfairly controlled by governing authorities. Law enforcement agencies have legal access to telephone records, including cellular phone clients' personal information, and service providers are required to grant the Ministry of Internal Affairs and the Federal Security Service 24-hour remote access to their client databases. Internet service providers are required to provide dedicated lines to the security establishment, enabling police to track private email communications and monitor Internet activity. Despite a general tendency to increase judicial independence, the judiciary often operates to protect state interests. In 2009, human rights abuses included political pressure on the judiciary, restrictions on the mass media, intolerance of ethnic minorities, corruption, selective enforcement of the law, and erosion of accountability of government leaders to the population. Authorities did not always observe Russian law allowing officials to enter a private residence only in cases prescribed by federal law or judicial decision. Security forces were implicated in illegal electronic surveillance, politically motivated abductions, disappearances, unlawful killings, torture, arbitrary arrest and detention, violence and other harsh treatment. The Russian government began implementing police reforms in 2009, but a number of prominent human rights activists and journalists were killed by unknown persons, apparently for reasons related to their professional activities. Human rights abuses related to the Chechen conflict led the U.S. State Department in August 2009 to warn of the dangers of travel to the Caucasus region. Terrorist acts, including bombings and hostage takings, continued to occur in Russia, particularly in the Caucasus region.

Following the dissolution of the Soviet Union in December 1991, Russia has increased its international profile, taking active steps to become a full partner in the world's principal political organizations, such as the United Nations. The United States and Russia share common interest on a broad range of issues, including countering terrorism, reducing their strategic arsenals, and stemming the proliferation of weapons of mass destruction. Between 1992 and 2008, the United States supplied Russia with almost \$17 billion to support urgent humanitarian needs, Russian democratization, and market reform. On the other hand, Russia inherited a significant intelligence capability from the former Soviet Union, and continues to focus, with increasing sophistication, on collecting sensitive and protected U.S. technologies through its intelligence services. Beyond collection activities and espionage directed at the United States, Russia provides various military technologies to other countries, including Iran, Syria, and Venezuela. Because of the deterioration of its



conventional military forces, Russia is increasingly relying on nuclear forces to maintain its status as a major power. Russia remains the most capable cyber-threat to the United States. The country is developing systems and technologies capable of interfering with or disabling vital U.S. space-based navigation, communication, and intelligence collection capabilities.

The relationship between the United States and Russia remains complicated. After the terrorist attacks of September 2001, the NATO-Russia Council was established, giving Russia a voice in NATO discussions. Concerns over domestic developments in Russia, and foreign policy differences, including U.S. plans to deploy a ground-based missile system in Europe with interceptors in Poland, and a radar installation in the Czech Republic, led to strained relations between the United States and Russia starting in 2003. Russia's military invasion into Georgia in August 2008, and its decision to recognize the territories of South Ossetia and Abkhazia, led to a significant decrease in bilateral relations between the United States and Russia, and to temporary suspension of the NATO-Russia Council. The Obama Administration's efforts since 2009 to reinvigorate and expand bilateral cooperation have led to an improvement in relations between the two countries and Russia and NATO. However, some NATO allies remain concerned about Russia's continued insistence on its own "sphere of influence" along its borders.

## **Ukraine**

Ukraine, a former Soviet republic, became an independent nation in August 1991. It has a parliamentary-presidential system of government with separate executive, judicial, and legislative branches. On June 28, 1996, Ukraine adopted a new, democratic constitution which mandates a pluralistic political system with protection of basic human rights and liberties. Amendments effective January 2006 shifted significant powers from the president to the prime minister and a 450-member unicameral parliament. While Ukrainian is the official state language, 17% of Ukraine's of 45.7 million people are ethnic Russian, and in areas with significant Russian minorities, local and regional governments permit the use of the Russian language in local official correspondence. The Crimean peninsula is home to a number of pro-Russian political organizations that advocate succession of Crimea from Ukraine and annexation to Russia. While Crimea remains under Ukrainian jurisdiction, it retains significant political, economic, and cultural autonomy.

Ukraine's 2004 presidential election was characterized by pervasive election fraud, and it led to massive demonstrations (the "Orange Revolution") and invalidation of the electoral results. Subsequent elections in 2006 and 2007 were largely in line with international standards, although political in-fighting and the global economic crisis hampered Ukraine's progress toward a democratic society with a prosperous market-based economy. The results of the 2010 presidential election were accepted by the international community and affirmed by Ukraine's Constitutional Court.

Freedom of religion, speech, and the press are guaranteed by law, and authorities generally respect these rights. But human rights problems were reported in several areas in

2009, including police beatings and torture of detainees and prisoners, arbitrary and lengthy pretrial detention, ineffective control by the judiciary, widespread corruption in the government and society, violence and discrimination against women, children, and certain minorities, trafficking in persons, and limitations on workers' rights to join unions and bargain collectively.

Ukraine maintains peaceful and constructive relations with all its neighbors, particularly Poland and Russia. Ukraine's economy remains burdened by excessive government regulation, corruption, and lack of law enforcement. Steps have been taken by the Ukrainian government to privatize small and medium enterprises, but corruption has discouraged foreign investment in Ukraine. While the country has important energy sources in coal and large mineral deposits, Russia is Ukraine's principal supplier of oil and Russian firms own or operate the majority of Ukraine's refining capacity. Ukraine imports natural gas from Russia as well. In January 2009, Ukrainian-Russian relations were seriously strained when Russia's state-owned gas monopoly cut supplies of natural gas to Ukraine. The dispute was resolved peacefully in April 2010 when Ukraine agreed to extend the Russian Black Sea Fleet's lease of base rights in Sevastopol, Ukraine, for an additional 25 years in exchange for natural gas price concessions from Russia. Ukraine maintains peaceful and constructive relations with all its neighbors.

Ukraine inherited a military force of about 780,000 from the Soviet Union. Under defense reform legislation passed in 2004, Ukraine seeks to strengthen and modernize its force structure with an eye toward achieving NATO standards. Ukraine is currently participating in six United Nations peacekeeping missions and has a small number of troops serving in supporting roles in Iraq. With Russia opposed to Ukraine becoming a NATO member, Ukraine's current government has adopted a "non-bloc" approach and does not intend to pursue membership in any defense alliances, including NATO. Ukraine intends to pursue European integration while improving its relations with Russia and strengthening its strategic partnership with the United States.

The United States supported the "Orange Revolution" in Ukraine, and Ukraine's membership in the World Trade Organization in May 2008. The United States has upgraded its economic relations with Ukraine, and has favored helping Ukraine and other countries to reduce their dependence on Russian energy supplies. During a visit to Kiev in April 2008, then President Bush offered "strong support" for a Membership Action Plan (MAP) from NATO as a key stepping-stone toward NATO membership for Ukraine. After it failed to secure a MAP due to concerns of some NATO allies, the United States signed a "Charter on Strategic Partnership" with Ukraine in December 2008, addressing areas of bilateral cooperation, including enhanced security cooperation intended to increase Ukrainian capabilities and strengthen its candidacy for NATO membership. There is no evidence that Ukraine aggressively targets U.S. interests, or sensitive economic or proprietary information.

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 that 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. Section 7 of Executive Order 10865 provides that 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

### Foreign Influence

The security concern 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.

In February 2008, Applicant married a Russian resident citizen with whom he had a relationship established initially around January 2005 through an online dating website. They strengthened their relationship through instant messaging and then through times spent together in Italy in July 2005, Spain in April 2006, Russia from October to November 2006, France in March 2007, and the United States from July to September 2007 and December 2007 to January 2008. She immigrated to the United States in October 2008, and was granted lawful permanent residency with conditions in March 2009. But she remains a citizen of Russia, and after she immigrated to the United States, she apparently consulted on a part-time basis for the department of culture in her previous geographic locale. Potentially disqualifying condition 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 established. Furthermore, his spouse’s personal ties with her son and his family (including her two young grandchildren) and her mother in Russia, and to her brother in Ukraine, raise additional security concerns under AG ¶ 7(a), ¶ 7(b) (“connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information”) and ¶ 7(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”). Although Applicant’s spouse appears to have closer ties to her son and grandchildren, she continues to contact her mother and brother with some regularity.

AG ¶ 7(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 a heightened risk of foreign influence or exploitation,” was not established. Well before her U.S. immigration, Applicant’s spouse deeded ownership of her flat in Russia to her son to keep it out of the divorce proceedings involving her first husband in Israel. And, while

Applicant testified that his spouse has open bank accounts in Russia, and that she accrued some time toward a social security benefit, the available record does not shed light on the extent of her foreign bank deposits or retirement benefit. It is unclear whether she is currently receiving any payments from the Russian government.

Concerns about Applicant's travel to Russia (SOR 1.e) are legitimately raised in that it led to his marriage. Security concerns are implicated under AG ¶ 7(i), "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country." Because he stayed with his spouse during his trip in October 2006, he registered his private stay with local Russian authorities. Then, in February 2008, he had to obtain official approval from the Russian Foreign Ministry for his marriage. However, Applicant has not returned to Russia since his spouse's U.S. immigration, and he has no plans of future travel to Russia. Ongoing security concerns raised by his marriage are more appropriately addressed in AG ¶ 7(a) and ¶ 7(d).

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood of Applicant being placed in a position of having to choose between the interests of the foreign family members and the interests of the United States. The risk of coercion, pressure, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon a foreign government, or the country is known to conduct intelligence operations against the United States. Relations between the U.S. and Russia have improved since the dissolution of the Soviet Union. Some cooperation has been achieved in countering terrorism, reducing strategic arsenals, and stemming the proliferation of weapons of mass destruction. But domestic developments and human rights abuses in Russia, and foreign policy differences, have strained relations. The Obama Administration's efforts since 2009 to reinvigorate and expand bilateral cooperation have not stopped Russia from focusing with increased sophistication on collecting sensitive and protected U.S. technologies through its intelligence services. Neither Applicant's spouse's work in Russia, nor her son's present employment as head of information and technology for an Internet company in Russia, were shown to have any security or intelligence implications. Nonetheless Applicant's spouse's previous academic stature heightens the risk of her identity and activities being known to regional, if not national, authorities in Russia. At least initially after her U.S. immigration, she continued to consult for a Russian department of culture. And, although not alleged, she remains friendly with a professor on staff of the university where she had been a faculty head. Her son is employed as head of the information technology department for an Internet company in Russia. Even if the company has no direct tie to the Russian government, his activities could raise his visibility with Russian officials, particularly given Russia's restrictions on the media. I cannot fully apply mitigating condition AG ¶ 8(a) ("the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or

government and the interests of the U.S.”) because of his spouse’s strong ties to Russia and that country’s efforts to collect U.S. sensitive information.

Applicant knows little about his brother-in-laws’s current employment other than that he is a sea captain in the Caspian Sea. Any risk assessment of ties to Ukraine must account for potential Russian influence because of the two countries’ historical relationship, geographical proximity, and current constructive relations. Ukraine relies heavily on Russia for its natural gas supplies, and the Ukrainian government elected not to pursue NATO membership at present in response to Russian opposition. But there is also no evidence that Ukraine actively targets U.S. intelligence, military, or sensitive economic information. Applicant, who does not have a personal relationship with his brother-in-law, is not likely to be placed in a position of having to choose between the interests of this foreign national and the United States.

The salient issue in the security clearance determination is not in terms of loyalty or allegiance, but rather what is clearly consistent with the national interest. See Executive Order 10865. Yet, loyalty is a consideration when assessing whether an individual can be counted on to resolve any potential conflict in favor of U.S. interests. See AG ¶ 8(b) (“there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S. that the individual can be expected to resolve any conflict of interest in favor of U.S. interest”). Applicant’s loyalty to the United States is undisputed, and his spouse appears committed to remaining in the United States. As of July 2010, she was in her last day of an internship for a new career as a dental assistant in the United States, despite her academic credentials. But it is also unclear whether she continues to consult for a Russian entity, and she understandably has a particularly close relationship with her son and her grandchildren. Applicant’s affection or obligation to his spouse, and through her, to her relatives in Russia, cannot reasonably be characterized as “so minimal.” The first prong of AG ¶ 8(b) is not satisfied.

Whether Applicant has such deep and longstanding relationships in the United States that he can be expected to resolve any conflict in favor of the United States, his ties to Russia are solely through his spouse. Applicant’s brother is a U.S. resident citizen, and all of Applicant’s financial assets (employment income, property, and cash deposits) are in the United States. He does not have any political ties to Russia, and traveled there only twice, in October 2006 and then for his wedding in February 2008. The issue is not whether Applicant has a preference for Russia, which he clearly does not, but rather whether there is a risk of Applicant being placed in the untenable position of having to choose between the interests of his spouse or her family in Russia and the interests of the United States. Based on his spouse’s strong ties to Russia, I conclude AG ¶ 8(b) does not apply.

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,” is not pertinent based on the totality of his spouse’s ties to foreign nationals,

despite the evidence that Applicant has little (stepson) or no (mother-in-law, brother-in-law, and spouse's friends) ongoing relationships with foreign citizens.

Applicant waited 15 months and three separate trips to Europe to meet and vacation with his spouse to notify his employer and security management of his personal relationship with a Russian national, and to inquire whether he was jeopardizing his job or security clearance eligibility by this relationship. But reporting was not required in the absence of any suspicious contacts or their marriage. Applicant testified credibly that he reported his marriage to his employer as required. AG ¶ 8(e), "the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country," applies. But his compliance with the reporting requirements does not fully address the vulnerability concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has considered the possibility of undue foreign influence and credibly asserts that he would promptly notify his employer of any improper contacts. At the same time, he has placed himself in a vulnerable position by marrying a Russian citizen who had achieved some academic prominence in her field, and has ongoing strong ties to family members in Russia. His spouse does not yet enjoy the protections of U.S. citizenship should there be some undue foreign influence exerted by Russian authorities through her or her family members. At this time, I cannot conclude that it is clearly consistent with the national interest to grant or continue Applicant's security clearance eligibility.

## Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

## Conclusion

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

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Elizabeth M. Matchinski  
Administrative Judge