



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



In the matter of:)
)
) ISCR Case No. 10-09240
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations, but failed to mitigate the security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is denied.

On August 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant Statement of Reasons (SOR) detailing security concerns under Guidelines F, and B. The actions were 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on September 2, 2011, and requested a hearing before an administrative judge. The case was originally assigned to another administrative judge on November 22, 2011, and was reassigned to me on December 7, 2011. DOHA issued a Notice of Hearing on December 15, 2011. I convened the hearing

as scheduled on January 24, 2012. The Government offered Exhibits (GE) 1 through 5, and they were admitted into evidence without objections. The Government requested administrative notice of Hearing Exhibit I (HE). There was no objection, and I have taken administrative notice of HE I. Applicant did not offer any exhibits. The record was held open until February 7, 2012, to allow Applicant to submit documents. He submitted Exhibits (AE) A through D, which were admitted into evidence without objection, and the record was closed.¹ DOHA received the hearing transcript (Tr.) on February 1, 2012.

Findings of Fact

Applicant admitted all SOR allegations except ¶¶ 2.b, 2.c, and 2.f. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. He married in 1980 and divorced in 1987. He has two grown sons. He served in the Army and was honorably discharged. He worked for a defense contractor from 1988 to 2005.²

In 2005, Applicant left his job of 17 years with a defense contractor and moved to another state so he could take care of his parents, whose health was failing. At the same time, he agreed to go into business with his brother. Applicant invested about \$45,000 of his own money in the business. The business struggled, and when a government contract was canceled, it ran out of operating money. Applicant used credit cards for two to three years to subsidize his living expenses after this period. Sometime in 2009, he contracted with a debt consolidation company to help him organize, settle and pay his delinquent debts. He arranged to pay \$1,600 a month. He has consistently made payments, except for a three-month period when he used the money to pay taxes. Applicant paid the owed taxes. Applicant provided documented proof of his payments. In 2009, he was able to go back and work for the government contractor he had previously worked for. He worked there for 14 months until he obtained a better job offer from a different government contractor. He was given \$5,000 for moving expenses.³

The \$22,822 debt in SOR ¶ 2.f was settled by Applicant outside of the debt consolidation agreement. He used the \$5,000 he received for moving expenses provided by his employer, to resolve the debt. He has settled and paid the other alleged debts in the SOR, except two. SOR ¶1.a (\$4,306), a judgment that the creditor would not settle is being paid through garnishment. Applicant stated the payment of that debt

¹ AE A is a fax cover sheet. AE B is a 42-page document from Nationwide Asset Services, Inc. and bank statements. AE C is a court order. AE D is two months of earning statements. HE II is the Department Counsel's response to the documents and he had no objections to their admission into evidence.

² Tr. 22, 49, 66.

³ Tr. 22-23, 26-27, 30-40, 46-49; AE B.

will be completed by March 2012.⁴ Applicant is making \$400 monthly payments on the remaining debt, SOR ¶ 1.d (\$19,416), through the debt consolidation plan. After he completes the garnishment payments, he intends to increase the monthly payments on this debt to expedite its settlement. He anticipates the debt being paid by November 2012.⁵

In 2005, Applicant's friend enrolled him in several internet dating services. He received some emails from the services. In September 2005, he contacted a woman on a Russian website. They corresponded through email and telephone calls. She invited him to visit her in Russia. He visited her for two weeks. They continued their relationship online until he asked her to marry him in October 2006. He obtained a fiancé visa for her, and they were married in May 2007. She has a daughter who is now 21 years old. His stepdaughter stayed in Russia with her grandmother until June 2007, when she moved to the United States to be with her mother. Applicant's wife and her daughter do not have any contact with her ex-husband. Applicant does not know what his occupation is or when his wife last had contact with him. Applicant's wife worked in the telecommunications industry in Russia. She has a job in the United States as a systems analyst.⁶

Applicant's wife and stepdaughter are both citizens of Russia and permanent residents of the United States. His stepdaughter lived with them and now attends college and lives off-campus. Applicant's mother-in-law is a citizen and resident of Russia. She never married her daughter's father. Applicant's wife does not know her father.⁷

Applicant's mother-in-law sold her house in Russia and gave her granddaughter money to pay for college tuition. She moved into an apartment that formerly belonged to Applicant's wife, who signed it over to her in 2010. The value of the house was approximately \$25,000 to \$30,000. She is retired and receives a pension from the government. Applicant's wife has weekly contact with her mother in Russia. His stepdaughter talks to her grandmother in Russia once every one to two months. His wife provides financial support for her daughter. The daughter also has a part-time job. His wife has not applied for U.S. citizenship because it is expensive, and Applicant is trying to pay his delinquent debts. His wife has not returned to Russia since moving to the United States in 2007. His mother-in-law has not visited his wife in the United States. Applicant stated that if his wife's mother became ill or something happened, he would send his wife back to Russia to see her.⁸

⁴ Tr. 27, 40-42; AE C, D.

⁵ Tr. 27, 34-35, 42-46, 50-54; GE 3; AD B.

⁶ Tr. 23, 47-48, 54-60, 65-69, 71-75.

⁷ Tr. 59-61.

⁸ Tr. 50-52, 61-63, 66-68.

Applicant's stepdaughter does not maintain contact with her biological father. She has returned to Russia for a three-month period to visit her grandmother. A Russian relative purchased the plane ticket for her to visit. Applicant's stepdaughter has not applied for U.S. citizenship. She intends on remaining in the United States.⁹

The Russian Federation¹⁰

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. Russia and the United States share a common interest in controlling the proliferation of weapons of mass destruction and the means to deliver them. The Cooperative Threat Reduction (CRT) program was launched in 1992 to provide for the dismantlement of weapons of mass destruction in the former Soviet Union. The CRT program was renewed in 2006 for seven years, until 2013.

The Russian Federation's intelligence capability is significant and focuses on collection of information from the United States. Russia has targeted U.S. technologies, particularly cyberspace, and has sought to obtain 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. Two trends that may increase Russia's threat over the next several years is that many Russian immigrants with advanced technical skills who work for leading U.S. companies may be increasingly targeted for recruitment by the Russian intelligence services. In addition, a great number of Russian companies affiliated with the intelligence service will be doing business in the United States.

The Director of National Intelligence testified before Congress in February 2010 stating, "Russia continues to strengthen its intelligence capabilities and directs them against U.S. interests worldwide. Moscow's intelligence efforts include espionage, technology acquisition, and covert actions to alter events abroad without showing its hand."

⁹ Tr. 63-65.

¹⁰ HE I.

In June 2010, the U.S. Department of Justice announced the arrest of ten alleged secret agents for carrying out long-term, deep-covered assignments on behalf of Russia. The defendants plead guilty and were immediately expelled from the United States. In January 2011, a convicted spy and former CIA employee was sentenced to an additional prison term because of money laundering and conspiracy to act as an agent of the Russian government for passing information to the Russian government between 2006 and 2008.

The threat of terrorism in Russia continues to be significant. Travel in the vicinity of Chechnya may be dangerous, despite Russian efforts to suppress the terrorists. Acts of terrorism include taking hostages and bombings.

Russia has recognized the legitimacy of international human rights standards, but human rights abuses continue. Both Russian federal forces and Chechen rebel forces act with impunity while engaging in torture, summary executions, disappearances, and arbitrary detentions. Additional problems include corruption, media suppression, life-threatening prison conditions, and corruption in law enforcement.

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 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 and 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 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

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts after he moved to help his aging parents and started a new business with his brother that later failed. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following are potentially applicable;

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had numerous delinquent debts that he has settled and paid through a payment plan. However, there are still two remaining debts that he is paying. Therefore, at this time, I find AG ¶ 20(a) does not apply.

Applicant moved so he could help his aging parents. He then started a business with his brother and invested \$45,000 of his own money. The business was viable for a period, but eventually failed when a government contract was canceled. Applicant accumulated a significant amount of delinquent debt from using credit cards to subsidize his business and living expenses. I find these conditions were beyond Applicant's control. For AG ¶ 20(b) to be fully applicable, Applicant must have acted responsibly under the circumstances. Applicant contracted with a debt consolidation company in 2009 and has consistently addressed all of the delinquent debts since then. He has two remaining debts that he continues to make payments to resolve. He anticipates that all of his debts would be paid by November 2012. I find Applicant acted responsibly, and AG ¶ 20(b) fully applies. In addition, I find Applicant made good-faith efforts to repay his overdue creditors, and there are clear indications that his financial problems are being resolved and under control. Therefore, I find AG ¶¶ 20(c) and 20(d) apply.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding Foreign Influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Three are potentially applicable:

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

AG ¶¶ 7(a) and 7(d) require evidence of a "heightened risk." The "heightened risk" necessary to raise AG ¶ 7(a) is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country, as well as each individual family tie, must be considered.

Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.

Most nations with substantial military establishments seek classified and sensitive information from the United States because it has the largest military industrial complex

and most advanced military establishment in the world. Russian officials actively seek sensitive and classified information from U.S. citizens with access to this material.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. Russia's intelligence services conduct a full range of activities to collect economic information and technology from U.S. targets. Russia targets U.S. visitors overseas to potentially access sensitive information. It is one of the two most aggressive and capable collectors of sensitive U.S. technology particularly cyberspace.

Russia human rights record is uneven and poor. Two trends that may increase Russia's threat over the next several years is that many Russian immigrants with advanced technical skills, who work for leading U.S. companies, may be increasingly targeted for recruitment by Russian intelligence services and a greater number of Russian companies affiliated with the intelligence services will be doing business in the United States. These factors create a heavy burden of persuasion on Applicant to demonstrate that his relationship with his wife, stepdaughter, and mother-in-law do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and them. With Russia's poor human rights record, its aggressive collection efforts, its focus on obtaining U.S. intelligence, and its extensive covert operations in the United States, it is conceivable that it would target its own citizens or a former citizen living in the United States in an attempt to gather valuable information from the United States. Applicant's contact and relationship with his wife, stepdaughter, and mother-in-law, all citizens of Russia, are sufficiently close to raise a possible security concern.

Applicant's wife and stepdaughter are citizens of Russia and residents of the United States. His wife resides with him in the United States. His stepdaughter attends college in the United States and visits them. She returns to Russia to visit her grandmother, who is a citizen and resident of Russia. Applicant's wife worked as a systems analyst in Russia and now works for an American company in the same capacity. Her daughter intends on remaining in the United States. Applicant's mother-in-law provided financial help for her granddaughter, and another relative paid for a plane ticket so she could visit her grandmother in Russia. His stepdaughter has returned to Russia and spent three months with her grandmother. Applicant will assist his wife financially if she needs to return to Russia to help her mother. His wife and his stepdaughter have not applied for U.S. citizenship. These facts potentially create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and also create a potential conflict of interest. I find AG ¶¶ 7(a), 7(b), and 7(d) apply.

I have also analyzed the facts and considered all mitigating conditions for this security concern under AG ¶ 8 and conclude the following three are potentially applicable:

(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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.

Applicant's wife, stepdaughter, and mother-in-law are Russian citizens. His wife and stepdaughter live in the United States, and they maintain close contact with her mother, who resides in Russia. His stepdaughter spent three months with her grandmother on a return visit to Russia. Applicant's relationship with his wife and stepdaughter cannot be characterized as casual and infrequent. His wife and stepdaughter's relationship with her mother cannot be described as casual and infrequent. Therefore, I conclude that Applicant's relationships are likely to create a risk for foreign influence of exploitation. I find AG ¶ 8(c) does not apply.

Applicant's wife and stepdaughter are Russian citizens and their relationship to him is close. His mother-in-law resides in Russia. Due to Russia's aggressive espionage tactics against the United States, their covert operations within the United States and their willingness to exploit Russian immigrants in the United States there is considerable cause for concern. Applicant's wife worked as a systems analyst in Russia and does similar work in the United States. Under the circumstances, I find that it is likely that Applicant, his wife, or his stepdaughter could be placed in a position of having to choose between the interests of the United States and that of the Russian government or their family in Russia. I find Applicant has a deep and longstanding commitment to the United States. However, I find there is a conflict of interest because his sense of loyalty to his wife and her family is not minimal. Therefore, I cannot apply AG ¶¶ 8(a) or 8(b).

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 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 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant had delinquent debts due to moving to help his parents and a failed business. He started a repayment plan in 2009, and he has systematically reduced his debt. He has two debts remaining that he is making payments on. He expects all delinquent debts to be paid by November 2012.

Applicant's wife and stepdaughter are citizens of Russia. His mother-in-law is a citizen and resident of Russia. Although Applicant is a loyal American, who has served his country, his relationship with his wife and stepdaughter creates a heightened risk that is not mitigated. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Financial Considerations, but failed to mitigate the Foreign Influence guideline.

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
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a-2.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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge