



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



In the matter of:)	
)	
)	ISCR Case No. 10-00660
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. Delaney, Esq., Department Counsel
For Applicant: *Pro se*

April 29, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant was born in Russia. In 1994, Applicant came to the United States for post-graduate schooling. In 2009, he became a naturalized United States citizen. His sister, parents, and parents-in-law are citizens and residents of Russia. Applicant has rebutted or mitigated the security concerns under foreign influence. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department's (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Statement of Reasons (SOR) on June 23, 2010, detailing security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference.

On June 29, 2010, Applicant answered the SOR and requested a hearing. On October 12, 2010, I was assigned the case. On November 2, 2010, DOHA issued a Notice of Hearing for the hearing held on November 8, 2010. The Government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through C, which were admitted into evidence without objection. Applicant testified as did one additional character witness. On November 18, 2010, DOHA received the hearing transcript (Tr.).

Decision not to Proceed under Guideline C

Department Counsel stated that the Government did not intend to proceed under the allegations reflected in Guideline C, Foreign Preference. (Tr. 19) Guideline C is found for Applicant.

Request for Administrative Notice

Department Counsel asked administrative notice be taken of certain facts relating to the Russian Federation (Russia). (Tr. 16) The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibits (HEX.). The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.a. related to the Guideline C concern, on which the Government did not proceed. He admitted the factual allegations, with explanations, in SOR ¶¶ 2.a – 2.g. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 40-year-old principal systems engineer, who has worked for a defense contractor since January 2000, and he seeks to obtain a security clearance. Applicant's supervisor stated Applicant could have stayed where he was but chose to find a technical route that would allow him to expand his skills, understanding, and capabilities with the company. (Tr. 39) Applicant is looked to for guidance, direction, and support in the long term growth initiative. (Tr. 39) His supervisor believes Applicant's character to be of "extremely high caliber." (Tr. 43) Applicant is hard working, intelligent, dedicated, compassionate, honest, and trustworthy. He places the value of his employer and work assignment at the same level as his personal wants and needs. The Applicant is dedicated to the company. (Tr. 44)

Applicant and his wife were born in Russia. His two daughters, ages four and ten, were born in the United States and live with him. His oldest daughter was selected as recreational player of the year. (Ex. B) In April 2009, he became a naturalized United

States citizen. Applicant's wife is a Russian citizen who lives with him in the United States. He has lived in the same community for more than 15 years. (Tr. 23)

In 2004, Applicant's wife became a permanent resident of the United States. She did not initially apply to become a naturalized United States citizen due to the \$750 filing fee. He told his wife the money was not an issue to stop her from becoming a United States citizen. He said,

So finally I had told her no, this is insane. We both live here. We both like living here. We're not going anywhere, it's important for us so go do it, so . . . This is a testament about the good life in the United States. You don't have to be a citizen and still be respected neighbor of the country and the community and to live here. So it's not like this in Russia, for example. So we did not fee obligated to apply and become citizen. So that would happen, and we are very happy about this. (Tr. 84-85)

The day of the hearing, Applicant's wife was at the state capital proceeding with the naturalization process. (Tr. 93) She was being fingerprinted, which was the next step in her citizenship process. (Ex. A, Tr. 52) Following a background check, she will take the citizenship test. (Tr. 53)

It was always Applicant's plan to become a United States citizen. (Tr. 86) At age seven or eight Applicant started to formulate doubts about working and living in Russia. (Tr. 47) The doubts increased as he got older. He graduated from high school and university in Russia. He received a diploma, which is the equivalent of a Bachelor's degree, in chemistry. (Tr. 58) Due to his university attendance, he had no requirement for military service and has no obligation to repay the Russian government for the education he received. (Tr. 59)

In 1994, Applicant applied and was accepted as a full-time Ph.D. student and came to the United States to attend university. (Tr. 49) He was twenty-four years old and came to the United States on an F1² student visa. (Tr. 61) He was married to a Russian citizen at the time. His wife remained in Russian and visited him twice while he was a student. (Tr. 63) She did not like it in the United States. The marriage ended. (Tr. 63)

Applicant's sister, mother, and father are citizens and residents of Russia. He has bi-monthly telephone contact with his parents and weekly or bi-week email contact with his sister. (Ex. 3, Tr. 56) His mother is a retired typist and his father is a retired construction worker. (Ex. 3) He has a very close relationship with his father and does "not feel particularly close with" his mother. (Tr. 55, 72) He has a fairly close relationship with his sister. (Ex. 3) His 28-year-old sister is a homemaker, and she does not work outside the home. (Ex. 3) She is married to a car salesman. (Tr. 57) She was an office

² His wife had a G1 visa which required her to leave the United States after her studies and prevented her return for two years. (Tr. 61)

worker before her first child was born. (Tr.77) She has not worked outside the home in two years. Applicant routinely sends his sister holiday gifts.

Applicant sent his father \$5,000 to pay medical bills and some additional funds to have a gas line bought into his parent's home. (Tr. 54) Other than these payments, he has not sent his parents any funds since 2000. (Tr. 78) His father is 65-years-old and lives on a Russian government pension. His father has been retired for ten years. (Tr. 73) Applicant and his father have come to terms, and his father realizes he may not see his son again before he dies. (Tr. 55) Applicant visited Russia in 2003 and 2005. (Tr. 76) His mother has visited him in the United States twice and his father has visited him once. Except for his sister and parents, he has no communication with others in Russia.

When asked how he would react to pressure on his parents and sister, Applicant stated, "I have made my choices. I'm staying in this country." (Tr. 87) Applicant realizes it is better for him and his family to be in the United States.

After marrying in 1998, Applicant's wife came with him to the United States to attend post-graduate studies. During his education from 1994 to 1999, he returned to Russia two or three times. Since their marriage, his wife has returned to Russia four or five times. (Tr. 65) His wife received her Bachelor's degree equivalent while living in Russia and her post-graduate studies at the same university as Applicant did in the United States. (Tr. 68) His wife works for a firm that designs instructional manuals for schools. His wife is close with her relatives in Russia. (Tr. 65) Her mother and father are citizens and residents of Russia. Her father is a retired auto parts salesman, and her mother is a homemaker who never worked outside the home. (Ex. 3, Tr. 57, 69) She communicates with her mother weekly. Her parents have visited Applicant and his wife in the United States two or three times. (Tr. 66) The latest visit was in 2006, which was the last time Applicant saw them. (Ex. 3) His wife still has a Russian passport. Once a year, his wife talks to her aunt in Russia. (Tr. 71)

Applicant paid for his education by his job as a research assistant. (Tr. 62) He saved sufficient funds to purchase a computer. That computer purchase changed his life. He changed his major from chemistry to computer sciences. (Tr. 50) In 1999, he obtained two Master's degrees in science and was no longer able to pursue his Ph.D. in chemistry. (Tr. 50) While in school, he accepted an internship with his present company. (Tr. 51) The following summer, he obtained a second internship with the same company. The internships led to a job offer and he began working for the company in January 2000. (Tr. 52) As soon as he obtained his job, he applied for an H1V visa.

Applicant came to the United States on a Russian passport issued in 1993, which expired in November 2009. He used that passport three times. In 2001, he traveled to the Netherlands on company business for one week. (Ex. 3) In 2003, he traveled to Moscow on company business for one week. In 2005, he spent two weeks with his wife and daughters, visiting family in Russia. (Ex. 3)

In April 2009, Applicant became a naturalized United States citizen. (Tr. 83) In December 2009, he followed the formal process of Russian citizenship renunciation. To complete the process he needed a valid Russian Federation passport. In December 2009, he obtained a Russian Federation passport. He has not used the passport for travel. In June 2010, he surrendered his Russian passport to his Facility Security Officer (FSO).

Applicant volunteers at a local hospital doing hospice services. (Tr. 32) Four years ago he had a stroke and was treated at the hospital. The doctor told him he had three hours to live. (Tr. 89) Once so informed, he was a bit ashamed of how happy and content he was. He could see the fear in his wife's eyes, but he was not worried. He knew his wife was in the right place and knew his children would grow up and become productive members of society. (Tr. 89) The bleeding stopped. The lesson he took from this was the need to do more for the community, not just his family, but for the people. He started volunteering at the hospice center doing work others could not or would not do. (Tr. 90) Volunteering has become very important to him.

Russian Federation

The Russian Federation is a vast and diverse nation composed of 21 republics. (HEX I) Its population of 142 million people is multinational and multi-ethnic. *Id.* Russia achieved independence with the dissolution of the Soviet Union in August 1991. Russia has retained a powerful military and remains a nuclear superpower. (HEX I at 12) The Russian government consists of a strong executive branch, a bicameral legislature and a weak judiciary. (HEX. I, III)

“Although there is a general risk of U.S. citizens being subjected to indiscriminate acts of terror in Russia, there is no current indication that Americans are targets.” (HEX V) Terrorist activity in Russia includes suicide bombings, hostage taking, especially in connection with the Chechen conflict. (HEX. VI) Russian human rights abuses in the Chechen conflict include torture, summary executions, use of indiscriminate force and arbitrary detentions. (*Id.*) In addition to problematic behavior in the Chechen conflict, Russian authorities engage in arbitrary arrest and detention as well as torture and abuse to obtain confessions. Officials have illegally employed electronic surveillance, monitored internet, telephone and email communications, and entered residences without a warrant. (*Id.*) There is widespread government corruption and prison conditions are extremely harsh. (HEX. IV) Government pressure and censoring of the media and endemic crime are also significant Russian problems. The Russian legislature has passed a series of reforms in Russian criminal procedural laws, making their law more consistent with Western standards. (HEX. II) Russian human rights performance has improved in some areas. (*Id.*)

Russia has an active, ongoing collection program targeting sensitive U.S. industrial and military technology as well as commercial and dual-use technology. (HEX. V) Russia also targets national security and environmental researchers as well as signal intelligence. (*Id.*) Russia provides technology to other countries that has the potential to

be used in the construction of weapons of mass destruction, biotechnology and missiles. (*Id.*) “Regional branches of the [Federal Security Service] reportedly continued to exert pressure on citizens employed by foreign firms and organizations, often to coerce them into becoming informants.” (HEX. VII)

Russia and the United States are frequently aligned on political initiatives and have joined in numerous international agreements, including efforts to resolve international political problems at the United Nations. (HEX. III) For example, the United States and Russia entered into a bilateral World Trade Organization accession agreement in 2006. (*Id.*) In 2007, Russia imported U.S. goods valued at \$7.4 billion. Russia and United States are allies in the war on terrorism, and both seek to suppress the proliferation of weapons of mass destruction. Both countries have specially emphasized the reduction of strategic arsenals. (HEX. III) “Since 1992, the United States has spent over \$7 billion in CTR³ (or “Nunn-Lugar”) funds and related programs to help Russia dismantle nuclear weapons and ensure the security of its nuclear weapons, weapons grade material, other weapons of mass destruction, and related technical know-how.” (*Id.*)

In August 2008, Russia attacked Georgia. See President’s “Remarks on the Situation in Georgia,” August 18, 2008: “It now appears that an effort may be underway to depose Georgia’s duly elected Government. Russia has invaded a sovereign neighboring state and threatens a democratic government elected by its people.” See *also* Joint Statement on Georgia by Foreign Ministers of Canada, France, Germany, Italy, Japan, the United States and the United Kingdom, Department of State Media Note, August 27, 2008: “Russia’s recognition of the independence of South Ossetia and Abkhazai violates the territorial integrity and sovereignty of Georgia and is contrary to U.N. Security Council Resolutions supported by Russia. Russia’s decision has called into question its commitment to peace and security in the Caucasus.”

In June 2010, the U.S. Department of Justice arrested ten alleged Russian secret agents who carried out long-term deep-cover assignment in the United States on Russia’s behalf. (Tr. 98, HEX. VIII) All ten pleaded guilty to conspiracy to act as an agent of a foreign government within the United States. (Tr. 98, HEX. IX)

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 must be considered in evaluating an applicant’s eligibility for access to classified information.

³ The Cooperative Threat Reduction (CTR) program, popularly known as “Nunn-Lugar” after the two senators – Sam Nunn (D-GA) and Richard Lugar (R-IN) – who shepherded it through Washington, is an initiative to secure and dismantle nuclear and other weapons in Russia and other states of the former Soviet Union.

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 interests of 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 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 interests of interest and shall in no sense be a determination of 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates three conditions that could raise a security concern and may be disqualifying 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;

(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 persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

Applicant's sister, parents, and parents-in-law are citizens and residents of Russia. His wife is also a Russian citizen who lives with him in the United States. The disqualifying condition listed in AG ¶ 7(d) applies to his wife. The occupations of his relatives in Russia are typist, retired construction worker, retired auto parts salesman, and two homemakers. Applicant started to formulate doubts about working and living in Russia when he was seven or eight years old. In 1994, he moved to the United States for post-graduate schooling. He has visited his relatives in Russia in 2003 and 2005. In order to formally renounce his Russian citizenship, he needed a valid Russian Federation passport. In December 2009, he obtained a Russian Federation passport, which has not been used for travel, but used in the process to surrender his Russian citizenship, and in June 2010 he surrendered his Russian Federation passport to the company's FSO.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has frequent, non-casual contacts with that relative, this factor alone may be sufficient to create the potential for foreign influence and could

potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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. The complicated, competitive relationship of Russia with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his sister, parents, and his spouse's family 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 these persons. With its mixed human rights record, and political, economic, and military rivalry with the United States, and history of espionage against the United States, it is conceivable that Russia would target any Russian citizen or former citizen living in the United States in an attempt to gather valuable information from the United States.

There is evidence that Russian intelligence operatives seek classified or economic information from U.S. businesses and/or government agencies. Applicant's connections to his sister, parents, and his spouse's family create a potential conflict of interest because these relationships are sufficiently close to raise a possible security concern about his desire to help his and his spouse's relatives living in the Russia by providing classified information.

Applicant has contact with his sister and parents, has a close relationship with them, and traveled to Russia in 2003 and 2005. These events raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The mitigating factors listed in AG ¶¶ 8(a) and 8(c) cannot be applied with respect to his sister, parents, and spouse's relatives. Applicant has an emotional bond with them and his spouse has an emotional bond with some of her relatives in Russia. Applicant's wife has been a permanent resident of the United States since 2004 and is proceeding with the naturalization process. Following a background check, she will take the citizenship test in her quest to become a United States citizen. She has lived in the United States since 1998. His relationship with his wife and in-laws is not a security concern. "It is unlikely [he] will be placed in a position of having to choose between the interests of his wife and her parents and the interests of the U.S." He does not have a particularly close relationship with his in-laws, which creates low potential of forcing him to choose between the United States and Russia. He met his burden of showing there is "little likelihood that [his relationship with wife and in-laws] could create a risk for foreign influence or exploitation." See *generally* ISCR Case No. 03-04300 at 5 (App. Bd. Feb. 16, 2006) (citing ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002)).

Applicant communicates with them regularly and frequently. He has a very close relationship with his father and sister, but does "not feel particularly close with" his mother. Although Applicant's close relationship with these family members is an important positive reflection of his character, the same close relationships raise security concerns for possible foreign influence.

Applicant's sister was a typist before she became a homemaker. His father is a retired construction worker and his mother is a homemaker. There is no evidence that his sister or his parents have been political activists, challenging the policies of the Russian Government. There is no evidence these relatives currently work for or have ever worked for the Russian Government or military or any news media. There is no evidence that terrorists or the Russian Government have approached or threatened Applicant, his or his spouse's family living in Russia for any reason. There is no evidence that these family members living in Russia currently engage in activities which would bring attention to them or that they or other Russian elements are even aware that Applicant works for a government contractor or might have access to classified

information. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation. However, because Government has no burden to prove such information limited weight that can be given to the absence of such information.

Applicant deserves some credit because of the reduced possibility that Russia will exploit his or his spouse's family living in Russia because of the low profile they have in Russian society. Applicant and his spouse's close relationship with them, their frequent contacts with them, and the nature of the Russian Government and its complicated and sometimes contentious relationship to the United States, all weigh against mitigating security concerns. See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

Applicant's close relationship with his daughters and his strong connections to the United States tends to mitigate the foreign interest security concerns. Applicant has "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." His daughters are U.S. citizens, and reside in the United States. Applicant has lived in the United States since 1994. His family has lived in the same community for 15 years. He, his wife, and daughters are fully inculcated with U.S. values. Applicant has worked for government contractors with dedication and distinction. He has no property or investments in Russia. He has many friends and colleagues in the United States. He is a loyal, dedicated U.S. citizen.

Applicant's 2006 stroke was a life altering event. At the time of his stroke, he knew his wife and children were in the right place and knew his children would grow up and become productive members of United States society. He realized he had to do more for the community, not just his family, but for the people who live around him. Since recovering from his stroke, he has been volunteering at the hospice center doing work others could not or would not do.

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 the facts and circumstances surrounding this case. There is some evidence in favor of mitigating Applicant's conduct.

Applicant realizes it is better for him and his family to be in the United States and his future and his family's future is in the United States. He has formally renounced his Russian citizenship. In response to how he would react to pressure brought to bear on his or his spouse's family living in Russia, he stated, "I have made my choices. I'm staying in this country." I found this statement to be sincere and credible. However, in ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 9, 2007), the Appeal Board reversed an administrative judge's decision to grant a PRC Applicant's clearance because he gave too much weight to the Applicant's "strong ties to the U.S." and determined there was insufficient evidentiary support for the conclusion that he "can be trusted to resolve any conflict of interest . . . in favor of the U.S." The Applicant in ISCR Case No. 06-24575 said he would not act against the U.S. if faced with the choice. However, the Appeal Board gives such promises little weight in their review of the evidence, stating:

An Applicant's stated intention as to what he would do in the future is of relatively little weight, given the record in this case. See ISCR Case No. 03-09053 at (App. Bd. Mar. 29, 2006) ("An applicant's stated intention about what he or she might do in the future under some hypothetical set of circumstances is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the applicant has acted in a similar manner in the past under similar circumstances.")

Id. at 4. See also ISCR Case No. 07-00029 at 4 (App. Bd. Dec. 7, 2007) (criticizing the administrative judge's reliance on PRC-Applicant's promise to choose the U.S. over PRC should a conflict arise, and reversing the administrative judge's decision to grant a clearance). I respect the Appeal Board's position and give little weight to Applicant's promise to resolve any conflict in favor of the United States. I do however give weight to the objective descriptions of his strong connections to the United States, and limited connections to Russia.

A Guideline B decision concerning Russia must take into consideration the geopolitical situation in Russia, as well as the dangers existing in Russia.⁴ Russia is a

⁴ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

diplomatic and strategic partner of the United States in some areas where both countries have mutual interests. For example, Russia is a key partner in efforts to reduce proliferation of weapons of mass destruction and control of nuclear materials. Russia's relationship with the United States has significantly changed over the decades and is likely to change again in the future. Russia was an important U.S. ally in World War II, and then an enemy of the United States during the Korean and Vietnam Wars. Russia was the United States' primary antagonist through the Cold war. Russia has a mixed to poor human rights record. Russia is one of the most aggressive nations in the collection of U.S. intelligence and sensitive economic information. Although terrorists in Russia are not known to target relatives of Americans such as his family and his spouse's family, there is a significant problem in Russia with terrorists which is a factor in the analysis.

One element increasing the foreign influence security concern is Applicant and his spouse's frequent contacts with their relatives, and his mother's two visits and his father's one visit to the United States. He and his spouse clearly have close relationships with their family, and they are vulnerable to Russia coercion and non-coercive measures because of where they live. His father receives a social security type pension, and the Russian government could exert pressure on them by threatening to stop his father's pension. Because Russian government and intelligence personnel may violate Russian law, they are more likely to use improper and/or illegal means to obtain classified information through his family and his spouse's family.

There are significant factors supporting approval of Applicant's access to classified information. Applicant has lived in the United States since 1994. His wife has been a permanent resident of the United States since 2004 and is in the process of becoming a naturalized United States citizen. Applicant's closest relatives are his daughters, who are U.S. citizens. Applicant is an excellent employee and U.S. citizen. He prefers the United States, rather than to the Russia because the United States follows the Rule of Law, and Russian authorities do not. He thoroughly presented the evidence showing his connections to the United States and to the Russia. I found his statements to be honest, candid and credible. He provided corroborating statements concerning his loyalty and trustworthiness. He provided a favorable recommendation from his employer.

In a 2006 decision, the Appeal Board held the Judge properly determined under the "whole person" concept that an applicant with very significant connections to Russia had mitigated security concerns under Guideline B. In ISCR Case No. 03-04300, 2006 DOHA Lexis 264 at *17-*21 (App. Bd. Feb. 16, 2006),⁵ the applicant had weekly contact with her mother (who lives in Russia), contact three times per year with her aunt (who lives in Russia); contact about four times per year with her father-in-law (who lives in Russia); and multiple annual contacts with other relatives living in Israel. She had visited

⁵The Appeal Board reversed the Judge's decision to grant a clearance because of the strict requirements of the Money Memorandum (Applicant in ISCR Case No. 03-04300 had not turned in her Russian passport to the Russian government by the close of evidence).

her family in Russia and Israel, on more than one occasion, after immigrating to the United States. Moreover, she owned a half interest in her mother's apartment in Russia, and provided financial support to her mother and aunt. The Judge's whole-person analysis (that the Appeal Board determined was sufficient to mitigate such significant foreign influence security concerns) provides:

Looking at all of [whole person] factors, I conclude Applicant has overcome foreign influence security concerns. Given her strong ties to the U.S. and her limited contact with Russia and Israel since she became a U.S. naturalized citizen, there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) All of her immediate family are in the U.S., and the majority of her financial ties are in the U.S. Applicant has been a naturalized U.S. citizen for over fifteen years. She returned to Russia in April 2005 to abjure her Russian citizenship and has had limited visits with her mother, aunt and father-in-law in 1995 and 2002. She provides minimal support to her mother and aunt. She has only visited her sister and family in Israel in 1991, 1994, and 1997. While she has contact with her relatives in Russia and her relatives in Israel, that contact is limited. While her niece serves in the Israeli military, she has limited contact with her. Clearly, she put her interests in the U.S. ahead of her loyalty to her elderly mother when she chose to renounce her Russian citizenship.

Given her long history with her employer since April 2000, it is unlikely that she could be exploited by coercive or non-coercive means by the government in Russia or in Israel in a way that could force Applicant to choose between loyalty to her mother, aunt, father-in-law, her sibling and family and her loyalty to the United States. She stated that should any such attempt be made she would immediately contact the appropriate U.S. authorities. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives.

While clearance decisions are inherently based on numerous facts, and as such are made after a case-by-case analysis, the applicant in ISCR Case No. 03-04300 had similar connections to Russia as Applicant does in this case.⁶

⁶In ISCR Case No. 03-04300 the applicant's connections to the U.S. are as follows: (1) the applicant's husband and son live in the United States, and they are both dual citizens of Russia and the U.S.; and (2) The applicant has lived in the U.S. since 1989. The applicant in ISCR Case No. 03-04300 is a professional with post-doctorate teaching employment.

After carefully weighing the evidence of his connections to Russia, and to the United States, I conclude Applicant has carried his burden of fully mitigating the foreign influence and foreign preference security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”⁷ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

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, Freign Preference: FOR APPLICANT.

The Government chose not to proceed under Guideline C, Foreign Preference.

Paragraph 2, Foreign Influence: FOR APPLICANT

Subparagraphs 2.a–2.g: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge

⁷See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).