



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



In the matter of: )  
)  
) ISCR Case No. 10-00741  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

January 31, 2011

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant has failed to mitigate the foreign influence and foreign preference security concerns. Accordingly, his request for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 25, 2009 to request a security clearance required as part of his employment with a defense contractor (Item 6). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding that it is clearly consistent with the national interest to grant Applicant's request.<sup>1</sup>

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<sup>1</sup> See Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On June 8, 2010, DOHA issued Applicant a Statement of Reasons (SOR) (Items 1, 2) that specified the basis for its decision: security concerns addressed in the Directive under Guidelines C (Foreign Preference) and B (Foreign Influence) of the Adjudicative Guidelines (AG). Applicant answered the SOR allegations on July 15, 2010, and also requested a decision without a hearing (Item 3).

In his Answer to the SOR, Applicant admitted all of the allegations under Guidelines C and B. DOHA Department Counsel forwarded to Applicant a file of relevant material (FORM)<sup>2</sup> dated November 8, 2010, in support of the Government's preliminary decision to deny Applicant's request for a security clearance. He received the file on November 17, 2010. He was given 30 days from the date he received the FORM to file a response, but did not submit one. The case was assigned to me on January 7, 2011, for a decision based on the written record.

### **Procedural Ruling**

The Government requested I take administrative notice of certain facts relating to The Russian Federation (Russia). The facts are summarized at pages 3 through 8 of the FORM, and supported by ten Government reports (Items I – X). The reports provide elaboration and context for the summary. The facts administratively noticed are limited to matters of general knowledge not subject to reasonable dispute, and are included in the Government reports. They are set out in the Findings of Fact.

Based on a correction in Applicant's Answer, the Government moved to amend SOR allegation 2.c. to reflect present rather than past tense.<sup>3</sup> The amended allegation reads as follows:

“2.c. Your sister-in-law is a citizen of Russia and **is** the Chief of a Medical Center in Russia.”

I note that Applicant also stated that his sister-in-law is a Department Chief, not the Chief of the facility. I further amend SOR allegation 2.c. as follows:

“2.c. Your sister-in-law is a citizen of Russia and **is** the **Department** Chief of a Medical Center in Russia.”

### **Findings of Fact**

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

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<sup>2</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the Government's case.

<sup>3</sup> FORM at page 13.

Applicant, 53 years old, was born in Russia. He earned a master's degree in 1978 at a Russian state university. He immigrated to the United States in November 1998. He has worked in the United States in the computer field since that time. He works for a defense contractor and, as of 2009, held the position of senior software engineer/analyst. (Item 6)

Applicant became a naturalized U.S. citizen in October 8, 2008. His U.S. passport was issued on October 22, 2008, and expires on October 21, 2018. He is a dual citizen of Russia and the United States, and holds a valid Russian passport. It was issued on July 22, 2009, and is valid until July 22, 2014. Applicant has not voted or performed military service in Russia. (Items 7, 8)

In 1976, Applicant married a Russian citizen. She was employed in Russia as a university instructor. Applicant's wife came to the United States in 1999. She is not employed outside the home. She became a naturalized U.S. citizen in 2009, and also maintains Russian citizenship. Applicant's 34-year-old daughter lives in Germany, where she is a student and homemaker. She is a Russian citizen and is in the process of obtaining German citizenship. Applicant stated in his Answer that she is relinquishing her Russian citizenship. In his Answer to the SOR, Applicant also discussed the strong bond he has with his daughter. He noted that he visited her in Germany in 2002, 2005, and 2007. She visited him in the United States in 2008 and 2009. In August 2009, Applicant stated he talked with his daughter by telephone once per week; in November 2009, he said he talked with her by telephone monthly. (Items 3, 6, 8)

Both of Applicant's parents, who were citizens and residents of Russia, are deceased. Between 1999 and 2009, Applicant traveled to Russia six times. He visited his mother in 1999, just before she passed away. He visited his ailing father in 2000, 2002, 2005, and 2007. He returned to Russia in October 2009 when his father died. Applicant's sister, a Russian citizen, is a legal permanent resident of the United States. She is a homemaker, and plans to apply for U.S. citizenship when she meets the minimum residency requirement in two years. Her husband is Russian citizen. The record does not indicate how often Applicant is in contact with his sister, but he speaks with his brother-in-law monthly. (Items 3, 6, 8)

Applicant's parents-in-law are citizens and residents of Russia. Before he retired in 1992, Applicant's 86-year-old father-in-law worked for the Ministry of Mechanics. Applicant noted that this position was considered a government job when Russia was a Communist state. His mother-in-law, also 86 years old, retired in 1981 from her position as the deputy director of a technological college. Applicant speaks with his parents-in-law monthly by telephone. Applicant's sister-in-law, who is also a citizen-resident of Russia, is the head of the diagnostic department of a medical center, which Applicant describes as a government institution. He talks with her about once every three months by telephone. He visited all three family members when he traveled to Russia in 2002, 2005, and 2007. (Items 3, 6, 8)

Applicant bought an apartment in Russia in 1993, which is currently valued between \$20,000 and \$50,000. Until January 2010, he sent about \$1,200 per year to a friend to pay for its maintenance. He then rented the apartment and the rent now covers his maintenance costs. Applicant explained in his Answer of July 2010 that he plans to divest himself of interest in the property. He will either sell it or pass title to his sister-in-law. He did not provide any supporting documentation. (Item 3, 8)

Applicant discussed his foreign passport with Office of Personnel Management (OPM) security investigators in August and November, 2009. He stated he maintains his Russian citizenship and passport to enable him to travel quickly to Russia if necessary to care for elderly family members. Use of his Russian passport allowed him to do this when his father was seriously ill in October 2009. His father passed away at that time. During his security interview of August 3, 2009, he stated he was willing to renounce his Russian citizenship, and to relinquish his foreign passport, if these actions were required to hold a security clearance. (Item 8)

However, in his March 2010 interrogatory response, Applicant explained that he will keep and renew his foreign passport in order to take care of his elderly in-laws in Russia. He also stated that he was willing to renounce his Russian citizenship only after his elderly in-laws in Russia died. A few months later, in his July 2010 Answer to the SOR, Applicant stated that he has decided to forego visits to Russia to care for his in-laws. Applicant and his sister-in-law agreed that he will pass title of his apartment in Russia to her in exchange for her promise to care for Applicant's mother-in-law and father-in-law. (Items 3, 8)

### **Administrative Notice**

#### **The Russian Federation (Russia)**

I take administrative notice of the following facts about Russia, which appear in official U.S. Government publications (see Items I – X).

The Russian Federation (Russia) is composed of 21 republics. It achieved independence with the dissolution of the Soviet Union on August 24, 1991. It has a centralized political system, with a bicameral legislature, a weak judiciary, and power concentrated in the president and prime minister. Russia's large population of more than 142 million people is both multinational and multi-ethnic. Russia is a nuclear superpower which, since the dissolution of the Soviet Union, continues to develop politically, socially, and economically.

The United States and Russia share certain common strategic interests. Of interest to both states are counterterrorism and the reduction of strategic arsenals. Both 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.

Since 2003, U.S.-Russian relations have often been strained. Tensions between the United States and Russia increased in August 2008, when Russia sent its army across an internationally recognized boundary in an attempt to change by force the borders of Georgia, a country with a democratically-elected government. Russia's assault on Georgia followed other troubling signs: threats against Poland, including the threat of nuclear attack; suspicious poisonings and killings of journalists and those deemed "undesirable," including the President of Ukraine; the apparent use of energy resources to apply political pressure against Ukraine, Lithuania, and the Czech Republic; and the creation in Russia's state-controlled media of an "enemy image" of the United States.

There have been recent encouraging signs that Russia is prepared to be more cooperative with the United States, as illustrated by President Medvedev's agreement last summer to support air transit through Russia of military cargo in support of operations in Afghanistan, and Moscow's willingness to engage with the United States to reduce the nuclear threat from Iran.

The Russian Federation's intelligence capability is significant and focuses on collection of information from the United States. Russia has targeted U.S. technologies and has sought to obtain protected information through industrial espionage. Russian espionage specializes in military technology and gas and oil industry expertise. As of 2005, Russia was one of the most aggressive collectors of sensitive and protected U.S. technology. In addition to its technology collection and espionage activities against the United States, Russia supports missile programs and nuclear and biotechnology projects in other countries. Russia has provided missile technology to China, Iran, Syria, and Venezuela. These technologies can be used in the construction of weapons of mass destruction. Despite U.S. concerns, Russia continues to construct nuclear reactors in Iran.

Russia's internal problems include terrorism and a poor human rights record. Human rights abuses, as reported by the United States Department of State, include: reports that the government or its agents committed politically motivated killings and other arbitrary killings; credible reports that law enforcement engaged in torture, abuse, and violence; extremely harsh and life-threatening prison conditions; and arbitrary arrest and detention. The State Department has warned U.S. citizens of safety concerns related to travel in Russia.

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. In addition, adults must carry

internal passports when traveling within the country, and must register with local authorities within a certain time after arriving at a new location.

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>4</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>7</sup>

## **Analysis**

### **Guideline C, Foreign Preference**

AG ¶ 9 expresses the security concern under Guideline C:

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<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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

Under AG ¶ 10, the following disqualifying condition is relevant:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.

Applicant is a dual citizen of Russia and the United States. Dual citizenship, in and of itself, is not disqualifying.<sup>8</sup> However, conduct that constitutes an exercise of foreign citizenship, after becoming a U.S. citizen, is disqualifying. After becoming a U.S. citizen in 2008, Applicant exercised the rights of a Russian citizen by obtaining a foreign passport in July 2009. He again exercised his status as a Russian citizen by traveling on his Russian passport in October 2009. He currently exercises these rights by continuing to possess a Russian passport. AG ¶ 10(a)(1) applies.

I considered the following relevant mitigating conditions under AG ¶ 11:

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a United States citizen or when the individual was a minor; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

During his security interview in August 2009, Applicant stated that he was willing to renounce his Russian citizenship if necessary to hold a security clearance. Although Applicant has not provided proof that he has renounced his citizenship, Guideline C does not require action to renounce it, but only a stated willingness. AG ¶ 11(b) applies.

Applicant obtained a foreign passport in July 2009, nine months after he had become a U.S. citizen. He also exercised his rights as a Russian citizen by using his foreign passport to travel to Russia in October 2009, even though he had become a U.S. citizen the previous year. He used it because it allowed him to travel to Russia more quickly to see his ailing father. However, for those who seek security clearances, convenience is not a valid reason for possessing or using a foreign passport. Moreover, Applicant had met with an investigator in August 2009, and their discussion focused on his foreign citizenship and foreign passport. Therefore, he knew his foreign passport

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<sup>8</sup> ISCR Case No. 99-0454 at 5 (App. Bd. Oct 17, 2000).

was a security concern when he used it to travel to Russia two months later, in October 2009. AG ¶ 11(c) cannot be applied.

Applicant has been on notice that his valid foreign passport represented a security concern since August 2009, when he had his first security interview. At that time, he indicated he was willing to relinquish his foreign passport if necessary to obtain a security clearance. Later, however, he said he would not do so because he needed it to be able to travel quickly to Russia to care for his elderly relatives. In July 2010, he said he will no longer travel to Russia. However, his statement alone that he will no longer travel to Russia is insufficient. The Directive, under Guideline C, ¶ 11(e) states the specific actions that an applicant must take to mitigate the security concerns surrounding possession of a foreign passport. The Government's FORM also noted these steps: An applicant is required to destroy, surrender, or otherwise invalidate his foreign passport. Here, the record contains no evidence that Applicant has taken such steps, and AG 11(e) cannot be applied. The mitigation under AG ¶ 11(b) is insufficient to outweigh the disqualifying condition under Guideline C.

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern under Guideline B:

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. I have considered all the disqualifying conditions, and find that the following are relevant to the 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



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

The mere possession of close family ties with a resident or citizen of 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 is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>9</sup>

The country in question also must be considered. In particular, the nature of its 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. Although Russia and the United States are strategic partners in some areas, it is also true that Russia has focused its significant intelligence capability in an aggressive program of targeting sensitive U.S. information. It also has a poor human rights record, and violates civil rights by monitoring email traffic and telephone service.

Applicant has close ties to his family members in Russia – his mother-in-law, father-in-law, and sister-in-law. His father-in-law is no longer in the government position that he held before retirement 18 years ago. He is in touch with his parents-in-law once per month. His sister-in-law works in what Applicant described as a government position, and he speaks with her once every three months. He visited his family in Russia in 2002, 2005, and 2007. He also has self-proclaimed strong ties to his daughter, a Russian citizen living in Germany. Applicant and his daughter speak by telephone one to four times per month, and they have met for visits five times since 2002. He admits that he keeps his Russian passport to facilitate his visits with foreign family members. During the security clearance investigation, he declined to surrender his Russian passport because he needed to be able to go to his parents-in-laws' aid in an emergency, demonstrating his strong ties of affection and obligation to them. He only recently stated he would give up trips to Russia and make other arrangements for their care. His close relationship with his foreign family members creates a heightened risk of exploitation or coercion. Moreover, Applicant's ties of affection and obligation to his foreign family create a potential conflict of interest between his desire to protect them, if they were threatened or coerced by Russian authorities, and the obligation he would have to protect classified information, were he to hold a security clearance. AG ¶ 7(a) and (b) apply.

Applicant has owned an apartment in Russia since 1993, and paid for its upkeep when it was not rented. Its value is \$20,000 to \$50,000, and its annual upkeep amounted to approximately \$1,200. Applicant noted in his Answer that he planned to

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<sup>9</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

give it to his sister-in-law, but he provided no documentation showing that he has done so. Neither the Government nor Applicant submitted evidence showing the value of any U.S. property Applicant might own. Therefore, the record does not sufficient evidence to determine whether or not Applicant's foreign property is a "substantial" foreign interest. AG ¶ 7(e) does not apply.

I have considered the mitigating conditions under Guideline B (AG ¶ 8), especially the following:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant is bound by strong ties of affection and/or obligation to his parents-in-law, his sister, daughter, and sister-in-law, citizens of a country that targets U.S. sensitive information, and violates the human and civil rights of its people. In light of such facts, Applicant could be placed in a position that could force him to choose between U.S. and foreign interests. AG ¶ 8(a) cannot be applied.

In evaluating mitigation under AG ¶ 8(b), I considered Applicant's ties to the United States, including his 12 years living here, his two years of U.S. citizenship, and his service to the U.S. government through employment with a defense contractor. However, Applicant's foreign ties must be evaluated as well. His ties to Russia are strong, as demonstrated by his frequent telephone contacts with his family there, his trips to see them, his own statement of his strong relationship with his daughter, and his sense of obligation to travel quickly to his in-laws' aid. The fact that he has chosen to retain his foreign passport to ensure his ability to travel to Russia, though it undermines his ability to obtain a security clearance, indicates the high value he places on his foreign relationships. I cannot confidently conclude, based on these facts, that Applicant would resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) does not apply.

Mitigation under AG ¶ 8(c) is also unavailable. Relationships with immediate family members are presumed to be close, unless the evidence demonstrates otherwise. Applicant is bound by ties of affection to his foreign family. His contacts with them are frequent, and his conduct shows his relationship to his parents-in-law is particularly important. He has placed his ability to care for them above his desire to obtain a security clearance. Although he stated recently that he has made arrangements that obviate the need for him to travel to Russia to care for them, he has provided no evidence of this plan. In addition, he has not surrendered his Russian passport, which he used to travel to Russia to care for relatives in the past. Given the nature of Applicant's strong family ties, the risk of foreign influence cannot be ruled out.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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

Applicant has been a U.S. citizen for two years, and has provided service to the government through his work with a defense contractor. However, numerous facts weigh against granting Applicant a security clearance, including his ongoing relationships with his parents-in-law and sister-in-law in Russia, and his close relationship with his daughter, a Russian citizen who lives in Germany. They visit about every two years, and speak often on the telephone. Concerns remain under Guideline B because of these ties to Russia, a country that poses a heightened risk of exploitation.

Applicant appears to be ambivalent about retaining his Russian passport. Although he stated in his August 2009 security interview that he was willing to relinquish it, he did not do so. In March 2010, he stated that he would not surrender it, because he needed it for emergency trips to Russia to care for his in-laws. Then, in his Answer of July 2010, he said he would not go to Russia and his sister-in-law would care for them. As of the date of the FORM, he had not surrendered his foreign passport, as the Government's FORM and the Directive stated that he must do in order to be eligible for a security clearance. I conclude Applicant has not mitigated the Foreign Influence and Foreign Preference security concerns.

Overall, the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the Government.<sup>10</sup>

### **Formal Findings**

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

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|---------------------------|-------------------|
| Paragraph 1, Guideline C: | AGAINST Applicant |
| Subparagraphs 1.a. – 1.b. | Against Applicant |
| Paragraph 2, Guideline B: | AGAINST Applicant |
| Subparagraphs 2.a. – 2.h. | Against Applicant |

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge

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<sup>10</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).