



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-00752
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

January 31, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant became a naturalized U.S. citizen in 2006. He and his wife and children remain dual citizens of Russia, and have close family members who are resident citizens there. His father is an engineering professor at the Russian state-run polytechnic university from which he earned a doctoral degree in engineering. He regularly visits Russia using his Russian passport, and just renewed it. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on October 1, 2009.¹ On June 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines B (Foreign Influence), and C (Foreign Preference).² The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as

¹Item 4.

²Item 1.

amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 20, 2010, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on July 15, 2010. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on July 27, 2010, and returned it to DOHA. He provided no further response to the FORM within the 30-day period, and did not request additional time to respond. Applicant expressed no objection to my consideration of the evidence submitted by Department Counsel, or to my taking administrative notice of facts concerning the Russian Federation as requested in the FORM. I received the case assignment on October 12, 2010.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He has never held a U.S. security clearance. He is married, with two children, ages 17 and 9.⁵ In his response to the SOR, he admitted to each allegation.⁶ Applicant's admissions, including his responses to DOHA interrogatories,⁷ are incorporated in the following findings.

Applicant was born and raised in Russia. He holds a doctoral degree from a Russian state polytechnic university, where his father is an engineering professor and his mother worked as an engineer before retiring with a government pension. From March 1994 to December 1997, he worked as a research scientist at a university in a western European country. He then moved to the U.S. to work as a research engineer with a medical device company. In May 2005, he took a similar position with a different company. In July 2009 he began working in his current position.⁸

³Item 3.

⁴The Government submitted six Items in support of the SOR allegations, and nine U.S. Government documents in support of a request for administrative notice of facts concerning the Russian Federation.

⁵Item 4.

⁶Item 3.

⁷Items 5 and 6.

⁸Items 4 and 5.

Applicant was married in his hometown in Russia in 1993. His wife was also born and raised in Russia. They both became naturalized U.S. citizens and hold dual citizenship with Russia. Applicant's naturalization was finalized in March 2006. His elder child was born in Russia and his younger child was born in the United States. Both children also hold dual U.S. and Russian citizenship.⁹

Applicant's mother (age 71), father (age 70), brother (age 38), and father-in-law (age 74) are all citizens and residents of Russia. Applicant's mother-in-law is a Russian citizen who was granted permanent resident status in the United States, and now resides here.¹⁰ Applicant traveled to Russia to visit his family in 2004, 2007, twice in 2008, and 2009. He has a close relationship with his parents and maintains weekly contact with them via telephone. He also contacts his brother, who works for a food catering company, a couple times per year by telephone. His wife has weekly telephone contact with her father in Russia, and sponsored her mother to move to the United States to live near their family. Her parents are divorced, and are both retired engineers.¹¹

Applicant does not have any foreign financial interests. He regularly renewed his Russian passport every five years since coming to the United States, in 1999, 2004, and 2009. His current "external" passport was issued on July 29, 2009, and will not expire until July 29, 2014. He and his family members maintain Russian passports to facilitate their regular visits to family in Russia, and to permit rapid travel there without needing to obtain a visa in case any family emergency should arise. Applicant used his Russian passport for traveling to Russia in 2007, 2008, and 2009. He also maintains a Russian "internal" passport, which is used for travel and identification within Russia. He has no intention of surrendering or renouncing his Russian passports or citizenship. On March 22, 2010, he expressed his intention to renew the internal and external Russian passports when they expire.¹²

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

I take administrative notice of the facts concerning the Russian Federation that are set forth in Part III of the FORM. Of particular significance are the facts that Russia is among the most aggressive collectors of classified and proprietary U.S. technological,

⁹Items 3, 4, and 5.

¹⁰Items 3, 4, and 5.

¹¹Items 3, 4, and 5.

¹²Items 3, 4, 5, and 6.

economic, and military information, and has been involved with numerous attempts to illegally acquire restricted U.S. technology. Moreover, the Russian Federation maintains active espionage activity within the United States, and is known to engage in human rights abuses against their own citizens for political and intelligence-gathering purposes.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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 as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

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. Department Counsel argued that the evidence in this case established one foreign influence DC:

(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.

Although not asserted by Department Counsel, two additional DCs under AG ¶ 7 were also raised by substantial evidence:

(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 citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion.

Russia is known to target U.S. citizens, and to use Russian citizens living here, to obtain protected information. That country has a significant interest in acquiring advanced defense-related and industrial technology, and is among the most active and aggressive collectors of such intelligence by legal and illegal means. Its government has demonstrated the willingness and ability to use force and coercion against its own citizens to advance perceived state interests. Accordingly, family and professional connections there have more potential to generate heightened risk of foreign

exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (d) than would similar connections in many other countries.

Applicant's father, mother, and brother are resident citizens of Russia. He shares living quarters with his wife, whose father is also a resident citizen of Russia. These immediate-family relationships are all presumed to be close and loving, and Applicant offered no evidence to the contrary. Available evidence indicates that both he and his wife remain close to their family members in Russia, with regular and frequent communications and visits. Of particular concern, his father is an engineering professor at a Russian state-owned polytechnic university, and his mother draws a pension from the same facility, making their interest in advanced U.S. technology and engineering information particularly acute. Applicant's natural desire to help his parents by providing such information creates substantial potential for a conflict of interest with his obligation to protect such information from improper disclosure.

These facts meet the Government's burden of production by raising all three of the aforementioned foreign influence DCs. Applicant's contacts, relationships, and connections with Russia, and his parents' close connections and roles in the Russian engineering and higher education communities, shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), and (d) security concerns are:

(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 did not demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his professional history and family ties in Russia. He has close relationships and regular communications with his parents and other family members in Russia, and visited there five different times between 2004 and

2009. Both of Applicant's parents, and both of his wife's parents, are current or retired engineering professionals or educators, with interests in the same fields in which Applicant holds a doctoral degree and seeks to gain access to classified information. Applicant has lived in the United States for only 12 of his 45 years, and has been a U.S. citizen for less than 5 years. Although his wife and two children are U.S. citizens, they all retain their Russian citizenship as well. Applicant has no record of service or sacrifice for the United States that would demonstrate any deep or longstanding relationships or loyalties under Appeal Board precedent. Accordingly, the evidence fails to establish any of the mitigating conditions set forth in AG ¶¶ 8 (a), (b), or (c).

Guideline C, Foreign Preference

Under AG ¶ 9 security concerns involving foreign preference arise because, "[w]hen 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."

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying under this guideline:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

The evidence in the FORM established the foreign preference DCs set forth in AG ¶¶ 10(a)(1) and 10(b). Applicant's possession and renewal of current Russian passports since becoming a U.S. citizen in 2006 were affirmatively intended to obtain recognition of his continuing Russian citizenship by that government during his frequent travels there to visit his family. In so doing, he has exercised the rights and privileges of a Russian citizen in a way that shows preference for Russia over the United States.

AG ¶ 11 provides conditions that could mitigate foreign preference security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(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 U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

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

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant failed to establish mitigation under AG ¶¶ 11(a) or (b). Although his dual citizenship is based on his birth in Russia and his parents' citizenship there, he has taken active measures after obtaining U.S. citizenship in 2006 to reaffirm and maintain his Russian citizenship. His expressed refusal and unwillingness to renounce that citizenship or relinquish his Russian passport if required to obtain a U.S. security clearance was unequivocal. No other potentially mitigating condition was raised by the evidence either. He renewed his Russian passport in 2009, and consistently used it, rather than his U.S. passport, during his five visits to Russia since 2004. He offered no evidence that a cognizant security authority approved such use, or that his current Russian passport was either surrendered or invalidated.

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 pertinent facts and circumstances surrounding Applicant's case. The security concerns arising under Guidelines B and C do not involve any personal misconduct, dishonesty, irresponsibility, or disloyal activity. The primary whole-person issues of concern under these circumstances are his relationships with his Russian relatives, and his personal connection to Russia where he was born, maintains citizenship, and lived for the first two-thirds of his life. It would be unrealistic to conclude that he has no ongoing obligations and loyalties toward his family members in Russia, and he provided insufficient evidence to support such a finding. His renewal and uses of his Russian passport were recent, and his professional field is closely related to his father's work for the Russian government as an engineering professor. These considerations raise the potential for pressure, coercion, exploitation, or duress, and the likelihood of continuation or recurrence of possible conflicts of interest. (AG ¶¶ 2 (8) and (9).)

Applicant offered little evidence of professional, social, or financial ties to the United States that might weigh in favor of a whole-person finding of exceptional allegiance to United States interests. He has no history of military or other government service on which to base such a conclusion. He also provided no extrinsic evidence indicating a history of successfully safeguarding protected information, or otherwise tending to establish his responsibility, trustworthiness, or reliability.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence and foreign preference considerations.

Formal Findings

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a.(1):	Against Applicant
Subparagraph 1.a.(2):	Against Applicant
Subparagraph 1.a.(3):	Against Applicant
Subparagraph 1.a.(4):	Against Applicant
Subparagraph 1.a.(5):	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge