



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



In the matter of:)	
)	
-----)	ADP Case No. 10-00784
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Frederic M. Levy, Esquire

July 29, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant is seeking ADP access to sensitive information. On August 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under 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.

In an October 21, 2010, response to the SOR, Applicant admitted the facts underlying the sole allegation raised under Guideline C and admitted four of the eight allegations raised under Guideline B. He also requested a hearing before an administrative judge. The case was assigned to me on December 8, 2010. Department Counsel and Applicant agreed to a February 9, 2011, hearing date. A Notice of Hearing setting the hearing for that date was issued by DOHA on January 27, 2011. An amended Notice of Hearing was issued on January 31, 2011, to reflect a change in the time for the hearing.

The hearing took place as scheduled. Department Counsel submitted four exhibits (Ex.), including administrative notice materials, which were accepted into the record as Exs. 1-4 without objection. Applicant gave testimony and offered 20 exhibits, which were accepted into the record without objection as Exs. A-T. The transcript (Tr.) was received on February 15, 2011, and the record was closed. Based upon a review of the case file, exhibits, and testimony, eligibility for access to sensitive information is granted.

Administrative Notice

The Government requested administrative notice of certain facts and materials regarding the Russian Federation (Russia). Its submission (Ex. 4) included nine attachments, consisting of documents issued by various components of the U.S. Government. Those materials detail historical, civic, legal, demographic, economic, human rights, and diplomatic information about Russia, in general, and were considered in their entirety. Of particular applicability in this proceeding, it is noted that Russia has an active, ongoing information collection program targeting the United States. Russia and China have long been the most aggressive collectors of sensitive and protected U.S. technology and accounted for the majority of such targeting. Russian espionage specializes in military technology and gas and oil industry technical expertise. In June 2010, ten alleged secret agents who allegedly had been carrying out long term, deep cover assignments on behalf of Russia were arrested.¹

In addition, Russia often fails to follow the rule of law and seeks to militarily dominate its neighbors. It has provided various military and missile technologies to other countries of security concern, including China, Iran, Syria, and Venezuela. Finally, the U.S. Department of State has warned U.S. citizens about the dangers of travel to parts of Russia, including the threat of terrorism and hostage taking in Chechnya and the Caucasus region.

Findings of Fact

As a preliminary matter, it is noted that the sole allegation under Guideline C concerns the alleged exercise of dual citizenship manifested by Applicant's application for, and receipt of, a Russian passport in March 2008.² This occurred after September 2001, when Applicant both became a naturalized U.S. citizen and received a U.S. passport. His eligibility for the Russian passport was based on his birth in Russia to parents of Russian citizenship. On February 3, 2011, Applicant surrendered his unused

¹ Ex. 4, Attachment VIII (U.S. Dep't of Justice, Office of Public Affairs, *Ten Alleged Secret Agents Arrested in the United States*, dated Jun. 28, 2010).

² Applicant originally received a Russian passport as a teen, before he became a U.S. citizen. It was needed as identification to help him obtain a green card from the U.S. Immigration and Naturalization Service. Tr. 38. In 2008, he pursued its renewal on the prospect that he might wish to later visit his brother in Russia. Tr. 39. This was deemed necessary since the Russian government will not grant a visa to a U.S. passport holder who it considers to be a Russian citizen. *Id.*

Russian passport to his security officer, who accepted and physically destroyed the passport.³

Applicant is a 30-year-old consulting associate with expertise in business and finance. He has worked for the same defense contractor for eight years. He is married and has one minor child. Applicant earned a bachelor's degree in economics and a graduate-level certification in business and finance from a prestigious U.S. university.

Applicant was born in Russia in 1980, but spent several of his formative years with his parents in Western Europe, where his father was employed as a private sector teacher. At age 12, Applicant and his parents came to the United States, where his father had secured a position in post-secondary academia. The family applied for U.S. citizenship shortly thereafter.⁴ Applicant excelled as a high school student, where he received many honors. He also excelled as an undergraduate at a leading university. After receiving political support and based on his academic credentials, Applicant applied to transfer to a military academy, but his application was denied because he was not yet a U.S. citizen. He persevered at college, where he helped pay for his education through his efforts as a personal trainer. Two years later, in 2001, he became a naturalized U.S. citizen and received the aforementioned U.S. passport, which he subsequently used for international leisure travel. He graduated from college in 2002. He has not returned to Russia since immigrating to the United States at age 12.

During undergraduate school, Applicant met a student from Russia who was visiting his area on a work exchange program. Despite their budding courtship, she returned to Russia in 2001 to complete a graduate degree. She returned to the United States in 2002, and the two married. He later completed a two-year, post-graduate certificate program for professionals at a highly prestigious U.S. graduate school of an exclusive American university. Now an accountant, Applicant's wife became a U.S. citizen in 2007. Their son was born the following year in the United States.

Although Applicant and his parents are citizens and residents of the United States, Applicant has a brother who is a resident and citizen of Russia. That brother is 16 years older than Applicant and did not move to the United States with the rest of the family in 1992. Applicant's brother currently resides in a property inherited by his

³ Ex. Q (Affidavit, dated Feb. 3, 2011). See also Tr. 11, 109. In addition, Applicant offered to provide a written declaration renouncing his Russian citizenship if that status is still at issue. He had not done so previously because he was never "required to do so." Tr. 45. It is his understanding that in order to further renounce his Russian citizenship under Russian law, he would have to travel to Russia, register for its military draft, obtain a domestic passport, make declarations showing he has no financial interests in Russia, then begin the renunciation process. Tr. 45-46. He also testified that he cannot travel to Russia on a U.S. passport because Russia still considers him to be a Russian citizen, regardless of his choice or subsequent citizenship in another country. Applicant noted that all of these requirements would "take months" away from the United States, his family, and his work. Tr. 46-47. He further noted that with the destruction of his Russian passport in February 2011, he is no longer able to return to Russia to execute that process. Tr. 47-48.

⁴ Tr. 111,116-117.

parents. Applicant's brother is expected to inherit the property.⁵ His brother is an engineer who previously served in the Russian military as part of his compulsory service. Other than his compulsory service term, the brother has never worked for the Russian government.⁶ Applicant does not believe his brother has worked for a Russian governmental-related entity.⁷ The brother has applied for a green card and for entry into the United States. He visited the United States in 1995. After receiving "a favorable letter after his application was reviewed," he was awaiting an interview with the Immigration and Naturalization Service to finalize his preparation to immigrate to the United States.⁸ The two are "not particularly close."⁹ Their contact varies. At times they communicate every two or three weeks, at other times they may only communicate every few months.¹⁰ When they communicate, they use Skype, an Internet-based telephonic system,¹¹ and generally talk about their aged parents or family matters. Applicant has never visited his brother. Applicant's brother is married to a woman who works in the private sector, but Applicant has never met his sister-in-law.¹²

In addition, Applicant's mother-in-law and father-in-law are residents and citizens of Russia. They are educators employed by a state university.¹³ Applicant does not believe the father-in-law ever served in the Russian military. Applicant only speaks to his in-laws by telephone once or twice a year, on holidays or birthdays, although his wife speaks with them telephonically about once a week.¹⁴ Applicant's in-laws visited Applicant and his wife about three years ago, after the birth of Applicant's child. Applicant does not provide his in-laws or any other foreign contacts with financial assistance.

⁵ Tr. 114. The property at issue is Applicant's parents' sole remaining holding in Russia. They do not have other financial ties to Russia. Applicant is expected to inherit his parents' U.S. property.

⁶ Tr. 53.

⁷ Tr. 53, 86-88.

⁸ Tr. 52.

⁹ Tr. 53-54.

¹⁰ Tr. 54.

¹¹ Tr. 102-103.

¹² Tr. 115-116. Applicant has never met his nephew or his brother's first wife.

¹³ Tr. 56.-57, 97-100. Notice is taken that the current Russian Federation's civilian tertiary education levels are divided between federal universities, state (regional) universities, and private institutions, replacing the pre-Federation structure of national entities. Applicant is unsure of the classification of his in-laws' employer. However, he makes the distinction that his in-laws are employees of a "state" university within the Russian Federation, not direct employees of the national Russian Federation government.

¹⁴ Tr. 58-60.

Applicant also has a brother-in-law who is a Russian citizen, but who is a resident of the United Kingdom. This in-law and his wife both work in the private sector. Applicant does not believe his brother-in-law has ever worked for the Russian government. Applicant is not close to his brother-in-law, and they only speak once or twice a year, although Applicant's wife maintains regular telephonic contact with her brother.¹⁵ Applicant's brother-in-law visited the United States about three years ago, after the birth of Applicant's child.

In addition, Applicant maintains contact with a Russian citizen and resident he met in 2001. This acquaintance was a colleague of Applicant's future wife on a work exchange program in the United States. The man lives in Russia, where he works for a French private sector entity, and has no ties to the Russian government. Applicant characterizes this individual as a "casual acquaintance."¹⁶ They maintain contact through Skype every few months, when they exchange news about their growing families. Applicant last saw this acquaintance when the man traveled through the United States in 2009 on a family pleasure trip.

Neither Applicant nor his wife have any financial ties to Russia. He owns no property abroad and has no foreign bank accounts or assets. Applicant has no plans to visit Russia. He is devoted to his life in the United States. His sole source of income is from his current position, where he makes about \$70,000. His wife earns about \$65,000 a year. The couple owns their own condominium, which is valued at about \$330,000, and live comfortably. Applicant has domestic investments amounting to close to \$150,000 and a retirement account with over \$80,000. He currently has in excess of \$10,000 in his personal checking account. His wife has a retirement account with a balance of about \$30,000. Applicant votes in U.S. national and local elections. He has been active in his community.¹⁷ Applicant is proud to be a U.S. citizen, considers the United States to be his home, and noted "I wouldn't be anywhere else. I mean, this is my country, this is where my son was born, so I'm not going anywhere."¹⁸ If he was forced to choose between any remaining interests abroad and the United States, Applicant flatly noted, "it's not a question. U.S. interest comes first."¹⁹ Applicant is soon

¹⁵ Tr. 61-62.

¹⁶ Tr. 64, 105-106, 121. Applicant considers this individual to be a friend with whom he maintains casual contact.

¹⁷ Tr. 74.

¹⁸ Tr. 71.

¹⁹ Tr. 72. While I found Applicant entirely sincere in his statement, it is noted that the Appeal Board has determined that an applicant's stated intention about what he "might do in the future under some set of hypothetical set of circumstances is merely a statement of intention that is not entitle[d] to much weight, unless there is record evidence that the applicant has acted in a similar manner in the past under similar circumstances." ISCR Case No. 06-24575 at 5 (App. Bd. Nov. 9, 2007), citing to ISCR Case No. 03-09053 (App. Bd. May 29, 2006).

expecting a second child. He and his wife plan to raise their family In the United States. To the best of Applicant's knowledge, no member of his family has ever been a member of the Communist party.²⁰

At work, Applicant is highly valued as an efficient and thorough business researcher. A popular co-worker and friend, he has received multiple promotions and honors.²¹ His evaluations reflect a highly admirable work ethic, responsibility, professionalism, and initiative. He has received training in the protection of sensitive information compatible with his application for ADP access eligibility.

Policies

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All available, reliable information about the person, past and present, favorable and unfavorable, must be and will be considered in making a decision.

The protection of sensitive information is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to sensitive information will be resolved in favor of national security." In reaching my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ²² The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²³

²⁰ Tr. 113.

²¹ Tr. 27-26.

²² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that [assignment to a public trust position] determinations should err, if they must, on the side of denials.”²⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁵ The decision to deny an individual access to sensitive information is not necessarily a determination as to the loyalty of an applicant.²⁶ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for assignment to a position of trust. The DOHA Appeal Board may reverse an administrative judge’s decision if it is arbitrary, capricious, or contrary to law.²⁷ The federal courts generally limit appeals to whether or not the agency complied with its own regulations.

Based upon consideration of the evidence, I find Guideline C (Foreign Preference) and Guideline B (Foreign Influence) to be the most pertinent. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

Guideline C – Foreign Preference

The concern regarding foreign preference is that when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests

²⁴ *Id.*

²⁵ *Id.*

²⁶ Executive Order 10865 § 7.

²⁷ ISCR Case No. 07-16511 (App. Bd. Dec. 4, 2009) (citing Directive ¶ E3.1.33.3). See ISCR Case No. 09-03773 at 7 n. 4-6 (A.J. Jan. 29, 2010) (discussing appellate standards of review).

of the U.S.²⁸ Conditions that could raise an applicable concern and may be disqualifying include 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.²⁹

As a threshold matter, it must be noted that dual citizenship is not a bar to eligibility for a position of public trust, nor is its possession incompatible with the standards required for access to sensitive information. The United States Supreme Court recognized a right under the United States Constitution for United States citizens to have dual citizenship with another country.³⁰ Eligibility for a position of trust must be determined by application of the disqualifying conditions for foreign preference under the factual circumstances. In promulgating the disqualifying conditions, the President could have specified that dual citizenship by itself barred appointment to a public trust position, but he did not. The rule that was promulgated raises a concern based on an exercise, not the mere possession, of dual foreign citizenship.

A foreign passport can be construed as evidence of dual-citizenship to the extent its acquisition and use is an exercise of a right of foreign citizenship. Here, Applicant first acquired a Russian passport as a teen. This occurred when he was still a Russian citizen, based on his birth in Russia and his parents' status of Russian citizens, before he became a naturalized U.S. citizen. He later sought and received renewal of his Russian passport. Although that passport was never used, its acquisition and possession is sufficient to invoke Foreign Preference Disqualifying Condition AG ¶ 10(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). With a disqualifying condition raised, the burden shifts to Applicant to mitigate AG concerns.

Here, Applicant's dual-citizenship status was based on his place of birth and the nationality of his parents. Foreign Preference Mitigating Condition AG ¶ 11(a) (dual citizenship is based solely on parents' citizenship or birth in a foreign country) applies. Moreover, Applicant credibly testified that he only failed to formally renounce his Russian citizenship previously because he did not know a formal declaration was required. Since learning of the appropriate steps under Russian law, he has not done so because of the undue burden involved in traveling to Russia, fulfilling various requirements, and enduring a protracted period away from his family and job. His ability to execute this process was vexed by his submission and the destruction of his Russian passport, a document essential for the passage into Russia of one considered by Russia to be a Russian Federation citizen. At the hearing, however, he expressed his

²⁸ AG ¶ 9.

²⁹ AG ¶ 10(a).

³⁰ *Afroyim v. Rusk*, 387 U.S. 253 (1967).

willingness to submit a declaration renouncing his Russian citizenship. Therefore, AG ¶ 11(b) (the individual has expressed a willingness to renounce dual citizenship) applies.

In addition, Applicant surrendered his unused Russian passport to his security officer. The security officer accepted and destroyed the Russian passport. Consequently, AG ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated) applies.

Guideline B – Foreign Influence

The concern under Guideline B is that foreign contacts and interests may raise a public trust 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. Consideration should be given to 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are discussed in the conclusions below. Here, the country at issue is Russia. It targets the United States with active intelligence gathering programs and fails to follow the rule of law, thus necessitating serious consideration of related foreign influence public trust concerns.

Applicant has a brother, in-laws, and a friend of Russian citizenry. Most of them reside in Russia. He or his wife maintain varying degrees of communication with them. Foreign Influence Disqualifying Conditions AG ¶ 7(a) (contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of exploitation, inducement, manipulation, pressure, or coercion) and AG ¶ 7(b) (connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information) apply. With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Applicant maintains sporadic contact with his brother in Russia. Other than compulsory military service, there is no evidence this sibling is or was an employee of the Russian government. Applicant's brother is currently preparing to immigrate to the United States. The brother is 16 years older than Appellant. The brother was already a grown and independent man when the 12-year-old Applicant and his parents came to the United States. Applicant and his brother were raised separately and have lived in separate continents for nearly two decades. Although he once contemplated visiting his brother several years ago, Applicant's plan of a potential trip to Russia to see this

sibling never materialized. Applicant has no longer has any interest in visiting Russia, and he is currently unable to visit there. He describes his relationship with his brother as “not particularly close.” The relationship described tends to rebut the usual presumption of a close familial relationship between siblings. An even more remote relationship is maintained with an acquaintance who is a citizen and resident of Russia. Applicant’s acquaintance in Russia is an individual socially defined as a friend, but their infrequent Skype contact and singular in-person visit over the past decade only reflect a non-familial and casual acquaintance of long-standing.

Applicant’s relationship with his parents-in-law and brother-in-law, who are Russian citizens, is even more tenuous. They do not appear to have a defined, familial relationship, and contact is limited to infrequent telephonic contact. His in-laws visited Applicant and his family once, on the occasion of the birth of Applicant’s child. There is no direct evidence showing that his parents-in-law, who are residents and citizens of Russia, work for the federal Russian government or are otherwise agents of a foreign nation; their employment status as collegiate academics remain unclear. Applicant’s brother-in-law is an engineer, a Russian citizen who works in the private sector in the United Kingdom. In these proceedings, however, the relationship between a spouse and foreign nationals can be similarly attributed to an applicant. Here, Applicant’s wife keeps contact with these individuals about once a week by telephone. Thus, it can be concluded that Applicant’s wife maintains a close familial contact with her family members.

Overall, Applicant, now 30 years old, has lived in the United States since he was 12. He and his parents began the process to become U.S. citizens shortly after their arrival. He was educated in American schools, where he excelled as a student. He completed his undergraduate and post-graduate studies here. He became a naturalized U.S. citizen in 2001. Like his parents, he has established a social life in the United States. Applicant met his wife, then a Russian citizen and resident, in the United States. She chose to remain in the United States, the couple married, and she became a U.S. citizen. She is committed to Applicant and their child. Both now have successful private sector careers and are expecting a second child. They intend to raise their children here. They have a home worth about \$330,000 and have a combined income of approximately \$140,000 a year. They both have retirement plans through their work. Applicant has considerable domestic investments. In contrast, neither has any financial ties with Russia, nor do they have any assets or future interests abroad. Applicant’s aged parents live here. He is devoted to his job, where he is popular and respected. Applicant has no plans to visit Russia. He considers the United States to be his home. There is no suggestion that he is anything less than a highly loyal American devoted to his life here.

The country at issue is Russia, meriting serious consideration, and Applicant is seeking ADP access. As a whole, despite the above facts, Applicant’s strong ties to his family and life in the United States, and his comparatively tenuous ties to Russia, Applicant’s spouse’s relationships with her family in Russia appear close. Foreign

Influence Mitigating Conditions AG ¶ 8(a) (the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.) and AG ¶ 7(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) only partially apply.

With regard to Applicant's brother and Russian friend, AG ¶ 8(c) (contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation) applies. Due to his wife's contact and relationship with her family, however, that condition does not apply to Applicant's in-laws.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a public trust position by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for ADP access 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, as well as the "whole-person" factors. Applicant is a mature and forthright individual who has found much success in the United States. Through his credible explanation of circumstances and the relinquishment of his Russian passport, Applicant mitigated concerns regarding foreign preference.

With regard to concerns raised regarding foreign influence, due consideration of the whole-person is given beyond those referenced in terms of the available mitigating conditions. Applicant maintains an emotionally neutral relationship with his brother, who is considerably older, declined to move with his family from Russia to the United States nearly 20 years ago, and whose wife and child Applicant has never met. Their level of communication seems to have been heightened when the brother was seeking to immigrate to the United States. That communication is now more sporadic, which seems appropriate given their disparate ages, distance, and their minimal contact. Such factors tend to rebut the presumption of a close relationship between immediate family members. Moreover, Applicant's non-familial acquaintance with a Russian national appears to be politely casual, and not close enough to raise concerns.

One element increasing the foreign influence security concern is Applicant's wife's frequent contacts with her parents and brother. While Applicant has minimal contact with these extended family members, such marital contacts and relations are regularly imputed to the applicant in these proceedings. Based on the regularity of the contact between Applicant's wife and both her parents and her brother, and in absence of evidence to the contrary, these individuals must be assumed to share a close familial relationship. Due to their citizenship and, with regard to Applicant's parents-in-law, their residency, these kin are vulnerable to Russian coercion and non-coercive measures. Moreover, in failing to provide sufficient evidence that his parents-in-law are not constructively or effectively Russian government employees, there is the risk that the Russian government could exert pressure on them by threatening their employment or any future pensions. Moreover, Russia is known to threaten its neighbors and has demonstrated a disregard of the rule of law. Such behavior is additionally troublesome. Consequently, the potential for illegal or coercive practices to obtain sensitive information through Applicant's parents-in-law remains an issue.

There are significant factors supporting Applicant's application for ADP access to sensitive information. Applicant was highly credible in his testimony. He arrived in the United States with his parents as a child. Applicant and his parents quickly decided to start the process for gaining U.S. citizenship. Applicant excelled in school, worked his way through college, and completed a competitive post-graduate certification program for business professionals at a prestigious university. He remains close to his parents, who are settled in the United States. When he married, he and his wife chose to remain in the United States. They are planning on raising their child, who is a native-born U.S. citizen, in this country. Applicant has embarked on a successful professional career here. At age 30, he has accumulated a high degree of financial comfort and has earned the admiration of his professional superiors. His considerable financial assets, career, social life, and family are in this country, where he has also been civically active in his community. He has no financial ties or investments in Russia. Applicant freely surrendered his Russian passport to his security officer with the full knowledge that its destruction constructively barred his reentry to that country. He has neither the desire nor the current ability to return to Russia. He is devoted to the United States, takes pride in his U.S. citizenship, and plans to build a life for his growing family here. Finally, although his in-laws are Russian citizens, they apparently lead quiet lives. There is no evidence they have had any conflict with or scrutiny by their government.

A case under Guideline B or Guideline C involving Russia does not call for automatic denial, but does warrant a thorough consideration of the facts. In a 2006 decision, the Appeal Board held the Administrative 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),³¹ the applicant had weekly contact with her mother (an engineer employed by a Russian educational institution and who lives in Russia),³² contact three times per year with her aunt (who lives in Russia), contact about four times a year with her father-in-law (a physicist who work for a science society and who lives in Russia); and multiple annual contacts with other relatives living in Israel. Her son, who was born in Russia, later became a naturalized U.S. citizen. That applicant had visited her family in Russia and Israel on multiple occasions after she immigrated to the United States. Moreover, she owned a half interest in her mother's apartment in Russia, and provided financial support to both her mother and aunt. The Administrative Judge's whole-person analysis (that the Appeal Board determined was sufficient to mitigate such significant foreign influence security concerns) stated:

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.

³¹ The Appal Board in that case reversed the Administrative Judge's decision to grant a clearance because of the strict requirements of the Money Memorandum (Applicant in the underlying case had not relinquished her Russian passport by the close of evidence).

³² As in the instant case, there is no clear indication whether this woman or this applicant's father-in-law are employed by Russian Federation educational institutions.

Although clearance decisions are inherently based on numerous facts, and as such are made after a case-by-case analysis, it is beyond debate that the applicant in ISCR Case No. 03-04300 had more significant connections to Russia than either the Applicant or Applicant's wife does in this case.³³ I found Applicant highly credible, in his personal demeanor, persuasive testimony, references to mitigating facts, and overall presentation. I also considered the risks posed by the country at issue. After carefully weighing the evidence of his connections to Russia, and to the United States, I conclude that Applicant has carried his burden of fully mitigating the foreign influence and foreign preference security concerns raised in connection to his application for a public trust position.

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"³⁴ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the AG. For the reasons stated, I find Applicant is eligible for a position of public trust.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a-2.h:	For Applicant

³³ In ISCR Case No. 03-04300, the applicant's connections to the United States 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 had lived in the United States since 1989. The applicant in that case was a professional with doctoral-level teaching employment.

³⁴ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Access to sensitive information is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge