



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 10-00824
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

April 25, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On September 29, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective after September 1, 2006.

On October 11, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested a decision based on a hearing before an Administrative Judge. I received the case assignment on January 24, 2012. DOHA issued a notice of hearing on February 16, 2012, and the hearing was convened on March 6, 2012. At the hearing, the Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A, through F, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on March 15, 2012. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts relating to the Russian Federation (Russia). The request and the attached documents were admitted into evidence as Exhibit 6. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted SOR allegations 1.b., e., f., g., h., i., and j., and he denied 1.a., c., and d. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 52 years old. He has been married to his current wife from 1990 to the present, and he was previously married from 1984 to 1986. Applicant has one son from each marriage.

Applicant was born in the former Soviet Union in 1959 and moved to the United States in 1997. A month later his wife and five year old son came to the United States. He has been a United States resident since then. He has not traveled outside the United States since 2003. Applicant became a naturalized United States citizen in 2005. Applicant's son from his first marriage came to live in the United States in 2008. He received a Masters of Science degree in Mechanical Engineering. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

(Guideline B - Foreign Influence)

The SOR lists 10 allegations regarding Foreign Influence, 1.a. through 1.j., under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR:

1.a. It is alleged in the SOR that Applicant's spouse is a dual citizen of Russia and the United States, and that she resides with Applicant in Russia. She previously worked at the Russian Nuclear Facility (RNF) from May 1998 until August 1997. Applicant denied this allegation in his RSOR. At the hearing, Applicant testified that his spouse and he have resided only in the United States since 1997. (Tr at 40-41.) Based on Applicant's testimony, this allegation was amended to show that Applicant and his spouse reside in the United States, not Russia. Applicant did admit in his RSOR and by way of testimony that his wife had worked at the RNF. (Tr at 41-42.)

1.b. It is alleged in the SOR that Applicant has one son, who is a citizen of Russia and resides in the United States. He previously worked at the RNF. Applicant testified that his son was a student and worked for two months as an intern for the RNF. (Tr at 42.) In his RSOR, Applicant wrote that his son has worked in the United States for more than three years, and he plans to apply to be a United States citizen when he is eligible.

1.c. It is alleged in the SOR that Applicant's mother is a citizen and resident of Russia. She previously worked at the RNF. Applicant testified that his mother died in 2011. (Tr at 42.)

1.d. It is alleged in the SOR that Applicant's father is a citizen and resident of Russia. He previously worked at the RNF. He held a Russian Government security clearance. Applicant testified that his father has been retired since 2006, but he had been an Electrical Engineer and manager at the facility. Applicant speaks to him by phone approximately two times a month. (Tr at 44-45.)

1.e. It is alleged in the SOR that Applicant's sister and bother-in-law are citizens and residents of Russia. They previously worked at the RNF. Applicant testified that his sister only worked at the RNF for "a couple of years" and for all the rest of her life she has been and is currently a housewife. His brother had also worked at the RFNC for a few years, but then worked at a bookstore. Applicant does not know by whom his brother is currently employed. Applicant testified that he has not spoken to his sister or her husband since 2009, because of a falling out he had with them. (Tr at 45-47.)

1.f. It is alleged in the SOR that Applicant's ex-wife is a citizen and resident of Russia. She previously worked at the RNF. Applicant testified that his ex-wife had worked at the RNF for approximately 20 years as a secretary, but she is now retired. He has not spoken to her for several years, since their son came to the United States in approximately 2006. (Tr at 47-50.) A character letter from Applicant's son indicated that he actually came to the United States in 2008. (Exhibit E.)

1.g. It is alleged in the SOR that Applicant's Friend A is a citizen and resident of Russia. She currently works at the RFNC. Applicant testified that Friend A works for the RNF as a Chemical Engineer. He last spoke to her in 2010, just to socialize and to talk about their children. She has been a friend since they went to grade school together. (Tr at 50-51.)

1.h. It is alleged in the SOR that Applicant's Friend B is a citizen and resident of Russia. Applicant testified that Friend B is also a long term friend that he has known since grade school. She is employed as a hotel administrator. He last spoke to her sometime in 2011. They speak a few times a year just to socialize. (Tr at 51-53.)

1.i. It is alleged in the SOR that Applicant's Friend C is a citizen and resident of Russia. Applicant testified that this is a friend with whom he worked in the United States, but the friend became unemployed and returned to Russia. Applicant's contact with Friend C is infrequent. (Tr at 53-55.)

1.j. It is alleged in the SOR that from March 1983 until July 1997, Applicant worked at the RNF, and he held a Russian Government security clearance. Applicant left this position and left Russia without giving notice and without receiving permission from the Russia Government. In his RSOR, Applicant wrote that he and his family received immigration visas from the United States, and he did not inform the Russian Government, because he was afraid the Government would not allow them to leave. Applicant testified that he received the advice to leave Russia without giving notice to the Russian Government at the American Embassy. He explained that while employed at the RNF, he designed certain mechanisms, but since this was more than 15 years ago, all of his information would be out of date. (Tr at 55-57.)

Applicant testified that his Russian passport expired in 2005, and he has not used it since he became a United States citizen. He surrendered the expired Russian passport to the Security Officer of his current employer. Applicant lives in the house he purchased in 2003 with his wife and the son from his current marriage. He believes the value of the house is approximately \$510,000. (Tr at 57-60.) Applicant indicated that he would be willing to renounce his Russian citizenship, although he has heard from others that it is a difficult thing to do. Applicant made it clear he has no reason to maintain his Russian citizenship. (Tr at 78-79.)

Mitigation

Applicant submitted three Performance Reviews for his last three years of employment. In all three, his Overall Performance Rating was "Meets Job Requirements." (Exhibit A.) He also submitted five positive character letters from his wife, his sons, and his friends. (Exhibits B through F.) His friend described Applicant as, "someone who has an excellent character, is a loving dad, is an honest and upstanding citizen, a good friend with a high level of intelligence and commitment to succeed against any odds." Applicant's older son wrote, "From the best of my knowledge my father does not have any contacts with Russian or any other foreign government. He also does not have any financial or business interests in Russia. I know he believes in democratic and open society, he is honest and dedicated to United States."

Current Status of Russia

I take administrative notice of the following facts regarding Russia: Russia is a federation comprised of 21 republics. The Government has a centralized political system, with power concentrated in the presidency, and the office of the prime minister, a weak multiparty political system, and a ruling-party dominated bicameral legislature. Russia is a nuclear superpower and a vast and diverse nation that continues to develop politically, socially, and economically.

Tensions between the United States and Russia have increased on a number of issues that have contributed to ever-growing discord in U.S.-Russian relations. Russia has an active ongoing intelligence collection program targeting the United States. Russian espionage specializes in military technology and gas and oil industry technical

expertise. Russia has provided various military and missile technologies to other countries of security concern. Finally, Russia's human rights record remains uneven and poor in some areas.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline 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. Those that could be applicable in this case include the following: 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 foreign exploitation, inducement, manipulation, pressure, or coercion.” Applicant’s relatives and friends who are citizens and residents of Russia makes AG ¶ 7(a) a concern to the Government. I find that 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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information,” is also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 8(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,” is applicable to this Applicant and controlling for the following reasons:

Applicant moved to the United States in 1997, and has been a United States resident since then. He became a naturalized United States citizen in 2005. Applicant’s wife and two sons reside in the United States. His wife and younger son are United States citizens, and his older son plans to apply for U.S. citizenship when available.

Applicant’s mother is deceased, and his father is long retired and not involved with the Russian Government in any way. His contacts with the other Russian citizens on the SOR have been casual and infrequent. Applicant owns a home in the United

States valued at \$510,000, and he has no assets outside of the country. While Guideline C concerns were not alleged, Applicant has shown his preference for the United States by turning over his lapsed Russian passport, and not using it once he became a United States citizen. He also has indicated his willingness to renounce his Russian citizenship, although it is not clear whether or not he is considered to be a dual citizen by Russia. Based on all of these reasons, I conclude Guideline B for Applicant.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2 (c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why mitigating condition AG ¶ 8(b) applies, considered together with the positive character letter on behalf of Applicant, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

Formal Findings

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.j.: For Applicant

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 security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge