



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-02671
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid Williams, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

03/23/2012

Decision

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

On May 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline E (Personal Conduct) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

In his June 21, 2011, response to the SOR, Applicant admitted seven of the eight allegations raised under Guideline E and two of the four allegations raised under Guideline B. He also requested a hearing before an administrative judge. The case was assigned to me on September 27, 2011. The parties agreed to a December 3, 2011, hearing date. A notice to that effect was issued by DOHA on November 10, 2011. As the hearing was about to begin, Applicant gave Department Counsel some materials, including a psychological profile, that had not been previously offered to the Government for review. Department Counsel requested a continuance to review the new material. The parties agreed to reconvene on January 23, 2012. A notice setting the hearing for that date was issued on December 6, 2011.

The hearing was convened as scheduled. Applicant testified, introduced two witnesses, and offered 17 documents, which were accepted into the record without objection as exhibits (Exs.) A-Q.¹ The Government offered three documents and a package constituting information for administrative notice. Those materials were accepted into the record without objection as Exs. 1-4. The transcript (Tr.) of the proceeding was received on January 31, 2012. The record was then closed. Based on a review of the record, security clearance is denied.

Administrative Notice

The Government's Ex. 4 is a summary of facts about the Russian Federation (Russia) and ten attachments (I-X) which consist of U.S. Government documents. I take administrative notice of the information contained in those documents, and I specifically take notice of the following: Russia's intelligence services conduct a range of activities to collect economic information and technology from U.S. targets, and remains one of the two most aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly in cyberspace.² Valuable information can be gleaned from open source materials and emails. Non-cyberspace collection methods include targeting U.S. visitors overseas, especially if the visitors are assessed as having access to sensitive information.³

The Russian Government requires telephone and cellular companies to grant the Ministry of Interior and Federal Security Service 24-hour remote access to their client databases. It also requires telecommunications companies and Internet service providers to provide dedicated lines to the security establishment. In this manner, police are able to track private email communications and Internet activity. Poverty is an issue and recent measures have been made to better stabilize the economy.

Findings of Fact

Applicant is a 54-year-old engineer working for a defense contractor. He has a bachelor's degree in engineering and a master's degree in business. He maintained a security clearance from about 1986 through 1991, then again from approximately 2001 to present. He is divorced and the father of two adult children. He recently reconciled with his ex-wife.

In about January 2000, Applicant was working for a previous employer. At the time he did not have a security clearance. He was sent to work in Russia, where he would remain for the next two years, but travel back to the United States with some

¹ The Government initially objected to Ex. L. Its concerns were allayed by my assurance the document would be given appropriate weight in my consideration of the case. Tr. 17-20.

² Ex. 4 (Administrative Notice), Attachment I at ii and 4.

³ *Id.* at 2-3.

regularity.⁴ His duties included interfacing with all of the Russian agencies that were involved with his defense contractor's project. To further that goal, he often met with Russian government officials. This occasionally meant he socialized with such individuals. Sometime that year, Applicant, who was married at the time, began an extramarital affair with a Russian national, a fact he did not disclose voluntarily, but eventually admitted under questioning after returning to the United States in 2002.⁵ His wife did not find out about the affair until 2011, after their 2007 divorce.

During 2000 to 2001, Applicant entertained a Russian official (Official)⁶ at his home over dinners. They would meet about every three weeks over dinner, share a bottle of cognac, and often talk about work. Applicant regularly notified his employer through emails and telephone conversations about this person.⁷ The Official had been a guest in Applicant's home on other occasions.

During one visit, the Official asked Applicant what he had done for work previously. Applicant explained he had worked on a project related to nuclear power. The Official "said that would be very helpful. Russia is trying to do something like that. I initially told him all of that . . . was available on the Internet. . . . And just as a token of a friendly gesture, I gave him a paper copy of that same information that was available on the Internet." The information was not classified. During a subsequent dinner while the two were drinking alcohol, the Official offered Applicant \$900 for the information.⁸ Applicant was initially reluctant to accept the money, but the Official was "fairly insistent."⁹ He eventually accepted the money and signed a receipt for the sum. Applicant eventually reported the transaction under questioning after his return to the United States in 2002.¹⁰ He did not report it earlier because he was worried about potential income tax repercussions.¹¹ He eventually gave the money to his mother.

⁴ Tr. 103-104.

⁵ See, e.g., Tr. 62, 105-106. Applicant's wife was not told of the affair until after the SOR was received in May 2011. However, earlier, at Tr. 63, Applicant implied that the affair contributed to his 2007 divorce. He explained the discrepancy at Tr. 106 by stating, "well, we divorced and she suspected something had been going on."

⁶ Tr. 56.

⁷ Tr. 53, 98.

⁸ Tr. 57. The two would typically share a bottle of alcohol discuss work for about two hours. This amount of alcohol would be sufficient to get Applicant intoxicated. At the time, Applicant was not privy to classified information from his job. Tr. 99-100.

⁹ Tr. 58.

¹⁰ *Id.*, Tr. 104-105.

¹¹ Tr. 101.

During a subsequent dinner three or four months later, the Official noticed two books on Applicant's shelf. Applicant told them they were available on the open market. Applicant gave the Official two books related to nuclear power. The Official paid Applicant \$500 for the books and refused to sign a receipt. Applicant thought that "the whole thing just did not feel right," and reported the incident to the U.S. Embassy in Moscow.¹² When a representative from his company later arrived, Applicant told him of the incident and was advised to email a report to headquarters. After Applicant informed the Official that he had reported the incident, their relationship cooled.¹³

Applicant was granted a clearance with another agency in May 2001.¹⁴ During that time, he continued his on-going extramarital affair. At some unspecified time, Applicant met two woman for the first time.¹⁵ That night, he invited them back to his apartment, which he had rented privately without any advice from his company or the U.S. Embassy. There, his sexual advances were rebuffed by one of the woman.¹⁶ Later, one woman slept in another bedroom while Applicant slept with the other woman in his bed. On another day, he permitted his building's maintenance person entry to his apartment to conduct repairs. A week or more later, Applicant discovered that the used laptop he was given by his employer to facilitate his work effort, which was used during monthly meetings between Russians and U.S. contacts at work, was missing. To the best of his knowledge, it contained no classified information. He is unsure whether it was taken by one of the women or the worker. Neither the laptop or the living room in which it was kept was secure. To date, he is unsure of how it was stolen. Applicant was never given training on how to maintain his company's equipment.

On another occasion, Applicant visited a public cafe. Noting that other people had put their cell phones down on the bar, Applicant felt it was safe to do the same. His cell phone, which was purchased in Russia, included his personal and business contacts, both foreign and domestic. He then went to the restroom. Upon his return, he found that the cell phone had been stolen. He reported the theft at some unspecified time while in Russia. At another time, Applicant had his wallet stolen.¹⁷

¹² Tr. 60-61. A counterintelligence professional later told Applicant that it appeared the Official was "courting [Applicant] while [he] was working in Russia, slowly and meticulously. . . . [They said] this was a technique that the Russians had used previously" to build allegiances. Today, Applicant feels he would have seen "red flags going up all over the place" in such circumstances.

¹³ Tr. 59.

¹⁴ Tr. 50, 70.

¹⁵ Tr. 116. The facts do not indicate where he met these strangers.

¹⁶ Tr. 115.

¹⁷ Tr. 69

Throughout his stay in Russia, Applicant occasionally entertained various Russian nationals at his apartment while he was under the influence of alcohol and, at times, intoxicated. He also had multiple short-term sexual relationships. Only some of those trysts were reported to his superiors.¹⁸

Applicant returned to the United States in 2002. He was debriefed, then questioned by the Federal Bureau of Investigation and the agency which had granted him a clearance. During questioning, he admitted to having an affair with a Russian and also disclosed other information previously withheld. He was later given permission to meet the woman when she visited the United States a few years later. Applicant divorced in 2007. In the spring of 2007, he was suspended for three weeks without pay for his “poor judgment” with regard to business and ethics procedures between 2000 and 2001.¹⁹ He also met with Office of Personnel Management (OPM) investigators in 2007 about his Russian trip, but would not initially disclose certain information until his employer’s representative told him it was alright to do so.²⁰ His wife discovered his affair after the 2011 SOR was issued. Applicant testified that he learned from his experiences.²¹

In the 1990s, Applicant’s sister, a U.S. citizen by birth, immigrated to Russia and became a Russian citizen.²² She has an interest in her family’s roots in Russia, including its culture and language. It appears she is now a dual U.S.-Russian citizen, but Applicant is unsure. The sister works at a Russian educational institution. Her daughter, also a U.S.-born citizen, went with her mother and became a Russian citizen, but she currently resides in the United States.²³

Applicant believes his sister has multiple property interests in Russia. She visits the United States regularly.²⁴ Her trips are usually for a few weeks a year, during which time she stays with Applicant’s and her mother in a suburban area near Applicant.

¹⁸ Tr. 107.

¹⁹ Response to the SOR at 4; Tr. 67-68.

²⁰ Tr. 78-79.

²¹ Tr. 80. Applicant recognizes that he used poor judgment and would not behave similarly in the future should similar circumstances arise. He is a “lot more sensitive.”

²² Tr. 83. Applicant is unsure of when she emigrated from the United States. He stated she moved to Russia to teach her children Russian language.

²³ The SOR references at ¶ 2.d Applicant’s contact with two Russian associates. Applicant clarified that the two associates were his sister and niece.

²⁴ The record is unclear as to how often the sister visits the United States. At one point, Applicant stated, “she comes back and spends time in the United States. Typically two, three weeks. And then will go back to Russia.” Tr. 71. Elsewhere, he noted she lives between the United States and Russia. When it was suggested he saw her twice a week in 2009, he stated he did not know how often he saw her that year. Tr. 85.

Applicant sees his sister several times a year, usually at his mother's home.²⁵ He last saw her the weekend before the hearing at a wedding. They have not spoken since a disagreement "a couple years ago."²⁶ However, "it's not unusual for her not to speak to somebody for long periods of time. So, she treats others as she treats me."²⁷ He noted that she currently "ignores" him.²⁸ In March 2009, Applicant stated that he spoke on the phone with his sister about their mother about twice a week when she is in the United States.²⁹ Applicant does not feel that his relationship with his sister is likely to jeopardize his loyalty to the United States.³⁰ He also has periodic contact with his niece, usually a few emails and conversations per year, but they are not particularly close.

Two witnesses spoke of Applicant in high terms.³¹ A work peer noted that Applicant's former employer that sponsored Applicant's Russian trip required an employee to report all foreign contacts, including sexual liaisons.³² Applicant submitted six recommendations, all of which were complimentary.³³ He has received numerous awards and been evaluated as one who "exceeded requirements" in his December 31, 2009, evaluation.³⁴ No subsequent adverse incidents to those at issue are noted. There is no evidence Applicant presently has any medical conditions that would impair his abilities.

Policies

When evaluating an applicant's suitability for a security clearance, 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

²⁵ Tr. 71.

²⁶ Tr. 72.

²⁷ *Id.*

²⁸ Tr. 92.

²⁹ Tr. 90. Applicant then stated that they must have stopped speaking after that time.

³⁰ Tr. 73.

³¹ Tr. 24-48.

³² Tr. 37-40. The witness did not know if Applicant followed this requirement.

³³ Exs. A-F (Recommendations).

³⁴ Ex. H (Evaluation).

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 are considered 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 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. . . ." ³⁵ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ³⁶

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 an 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."³⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁸ The decision to deny an individual a security clearance is not necessarily

³⁵ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³⁷ *Id.*

³⁸ *Id.*

a determination as to the loyalty of an applicant.³⁹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. Based upon consideration of the evidence, I find Guideline E (Personal Conduct) and Guideline B (Foreign Influence) pertinent to the case. Relevant disqualifying and mitigating conditions noted under those guidelines are discussed below.

Analysis

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.⁴⁰ In addition, any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process is of special interest.⁴¹

While in Russia between 2000 and 2002, Applicant demonstrated poor judgment in a number of ways, including his interaction with Russian nationals, the maintenance of business property, and his general behavior as a U.S. citizen conducting government-related work abroad. Many aspects of his poor judgment were not revealed until he was questioned after he returned to the United States, despite regular access and use of email and telephone, as well as occasional interaction with personnel from his home office. In 2007, he was suspended from work without pay for incidents that occurred during his time in Russia. Such facts are sufficient to raise Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16 (d) (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, trustworthiness, unreliability, lack of candor, unwillingness to comply with the rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*) and ¶ 16(e) (*personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .*). With PC DCs raised, the burden shifts to Applicant to mitigate the security concerns.

Applicant's activities in Russia relevant to an assessment of Applicant's personal judgment and their repercussions include the following incidents –

³⁹ Executive Order 10865 § 7.

⁴⁰ AG ¶ 15.

⁴¹ *Id.*

- Applicant began an affair with a Russian national in 2000. He failed to disclose this fact voluntarily, but he admitted it to his employer during questioning after his 2002 return to the United States and to his family in 2011.⁴²

- Applicant had permission to meet with a certain ranking Russian official in both a business and social setting. However, he never considered that the Official could be an agent of Russia. Applicant also extended the parameters of their relationship to include excessive consumption of alcohol. He sold him a copy of information that he printed from an open source, the Internet. For this “friendly gesture,” Applicant was paid \$900. He declined to report the incident to his superiors because he thought it might lead to liability with the Internal Revenue Service (IRS) for the income derived. By the time it was revealed, he had given the money to his mother.

- Under similar conditions, Applicant accepted \$500 from the Official for two books. This time, he thought that the exchange “did not feel right.” He reported the incident to the U.S. Embassy, then later to his superiors.

- Before and after receiving a security clearance in May 2001, Applicant was encouraged to interact with Russian nationals to further his work. Such interaction was extended to include alcohol-driven social events at his apartment and anonymous sexual encounters with native Russians who visited his home.

- Despite his knowledge that theft was an issue, Applicant took no precautions to secure his apartment or either private or business property. He apparently provided unrestricted access to his apartment to Russian repair men, strangers, and overnight sexual partners, as well as known Russian social and business visitors. This openness led to the theft of his used business laptop, the contents of which Applicant believes included no classified information.⁴³ This fact was not immediately disclosed.

- Applicant entrusted his cell phone, which contained personal and business contact information, to a public bar, from which it was stolen in a few minutes. At another time, his wallet was stolen.

- Applicant had an ongoing extramarital affair while in Russia with a Russian national. He did not report this incident to his superiors until questioned after his return to the United States, and his family did not learn of the affair until after the SOR was issued in 2011. Such a relationship poses the potential of extortion and duress.

- In the spring of 2007, Applicant was suspended for three weeks without pay for poor judgment between 2000 and 2001.

⁴² Tr. 62, 105-106.

⁴³ The laptop presents a unique issue. It was used. The full history of its past use is unknown. Short of evidence that Applicant personally wiped the laptop down from past use, what might be gathered from the laptop’s memory, such as old reports or emails, is unknown.

In addition, although Applicant stated that he was sent to Russia without any advice as to life there, Applicant apparently failed to independently do any research. For example, even basic U.S. State Department materials concerning Russia note such things as governmental interference with cell phones and email transmissions as well as poverty, factors that might lead one to take more care with personal and business possessions. Moreover, alcohol abuse and affairs not only made him vulnerable to potential extortion, it blemished him in his role as a representative of the United States abroad and a family man at home. Taken as a whole, Applicant's poor judgment made him vulnerable to duress and exploitation.

Although Applicant's former employer chose to punish him in general terms for 2000-2001 incidents, the security clearance process necessarily involves a more detailed review of one's conduct and judgment. Here, Applicant's personal and professional conduct was reckless, unfitting to the circumstances, and showed very poor judgment. The alcohol abuse and sexual liaisons lacked the trustworthiness and dignity expected of an applicant for a security clearance. Whether it occurred on Russian or domestic soil, his failure to maintain safe custody of company property showed a low degree of reliability.⁴⁴ The sale of information for personal profit demonstrates highly dubious judgment, and his initial instinct to conceal the first \$900 payment not only shows a lack of professional responsibility and business ethics, but suggests that attempting to circumvent IRS reporting requirements were considered superior to his duty to report incidents to his employer.

Applicant noted that many of the events cited were disclosed after he returned to the United States in 2002 or thereafter. However, much of that information was discovered under questioning and was not proactively volunteered on his own initiative. Moreover, Applicant also noted that while he was in Russia, he had regular contact with his office in the United States by telephone and email, but he apparently declined to utilize these methods for reporting incidents. Such communication modes surely could have enabled him to make timely disclosures regarding his activities and contacts.

Given the circumstances, conduct, and venues involved, these episodes of poor judgment are of significance in assessing a defense contractor abroad, regardless of whether he had access to sensitive or classified information. His irresponsibility and low level of commonsense with regard to non-classified information and property only highlights the recklessness of his behavior in the context of a man seeking a security clearance. In light of these considerations, Personal Conduct Mitigating Condition AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) does not apply.

Finally, it is recognized that most of the acts at issue occurred about a decade ago, when Applicant was in his early 40s. It is also noted that Applicant has expressed credible contrition about his poor judgment, and stresses that he has learned much

⁴⁴ This is particularly true given the fact that Russian agents track emails and cell phone service.

from his experiences. He presented evidence showing that he has excelled at work, earned the trust of present co-workers, and demonstrated good judgment at his domestic position in the past few years. However, because his mettle has yet to be tested in the context of a highly independent assignment abroad or with significant foreign contacts, I find that AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) only applies in part. None of the other mitigating conditions apply.

Guideline B – Foreign Influence

The concern under Guideline B is that 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. The adjudication 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 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.

Russia is an active collector of U.S.-based economic and technological information. Consequently, heightened scrutiny is warranted. Here, Applicant's sister immigrated to Russia from the United States in the 1990s. She is now a citizen and resident of Russia. She works for a Russian academy, owns property, and has a fascination with her family's Russian roots and language. She regularly visits the United States, where she stays with Applicant's and her mother in a suburb near Applicant. The two have contact by phone, at their mother's home, and at local social events when she is in the United States. Therefore, 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 raised, the burden shifts to Applicant to mitigate security concerns.

Applicant testified that he and his sister are not close and that they have rarely spoken since a spat in 2009. Since then, the two only maintain contact through their mother. It is through their mother that they have brief telephonic contact, occasional in-person interaction at the mother's home, and limited contact at family gatherings.

However, it is not unusual for Applicant's sister not to speak to somebody "for long periods of time." Applicant noted that she treats him as she would others. Therefore, it may be concluded that their current spat is temporary and transient. Further, they both maintain close ties with their mother, through whose good offices familial contact is currently sustained. Moreover, while Applicant may depict his relationship with his niece as strictly cordial, their contact is regular and helps keep open a window of opportunity for the siblings to reconcile. In short, this is not the typical scenario of estranged siblings living in different countries and sustaining no intermediate familial ties; through tentatively passive contact and through Applicant's mother and niece, the siblings' familial connection is sustained.⁴⁵

In light of the above, Foreign Influence Mitigating Condition 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 ¶ 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*) do not apply.

Applicant's life, immediate family, and work is clearly based in the United States. There is no question that he has ties and allegiance to the United States. However, through his understandable devotion to his mother and his cordial relationship with his sister's daughter, Applicant maintains ties with his sister that could be manipulated. While his relationship with his sister may be currently strained due to a spat, her mercurial nature could change their current family dynamic at any time. Given the transient nature of Applicant's sister's familial devotion and their mutual love and devotion for Applicant's mother and niece, AG ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty to 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*) does not wholly apply.

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). 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.

⁴⁵ As noted, the SOR at ¶ 2.d references Applicant's contacts with two associates who are Russian citizens; Applicant identified them as his sister and niece.

The country at issue is Russia. Its intelligence services conduct a range of activities to collect economic information and technology from U.S. targets, and remains one of the two most aggressive and capable collectors of sensitive U.S. economic information and technologies. They target U.S. visitors overseas, especially if the visitors are assessed as having access to sensitive information. The Russian Government has telephone and cellular company access to their client databases. It can track private email communications and Internet activity. Such considerations demand heightened scrutiny. This is particularly true given facts suggesting Applicant was being assessed by the Official and the potential that his business property may have been seized by Russian agents.

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 man of 54. He has worked for government contractors for many years. He maintained a security clearance between 1986 and 1991. Well educated and with a master's degree, he was in his early 40s when he worked in Russia. He has raised two children, and recently reconciled with his ex-wife. He admits most of the SOR allegations and has expressed his regret concerning his past poor judgment.

When in Russia, Applicant pushed the parameters of his official duty to reinforce ties with Russian locals to meet his wants. It cannot be imagined that his superiors envisioned alcohol-driven meetings, trysts, and an unsecure residence as part of his job, nor it is likely he had permission to free-lance the sale of information to his contacts. His reporting of contacts and of various incidents was sporadic. He overlooked broad warning signs such as the Official's interest in Applicant's work and access, as well as repeated thefts of personal and business property. In conducting an affair and engaging in brief liaisons, he made himself vulnerable to exploitation. The facts at issue emerged over the last decade, with the last detail – disclosure to his family of his affair – occurring in 2011. To an everyday employee working abroad, such instances are notable. They are more egregious in one seeking access to the nation's secrets. While time has passed since Applicant returned from Russia, and while it is clear that he has been a successful and reliable worker since returning to the United States, there is no record upon which to judge his ability to comport his behavior on foreign soil, let alone while in possession of classified information.

Furthermore, at present, Applicant's relationship with his sister is practically non-existent, due to her mercurial nature. Applicant noted, however, that she goes through spells of not speaking to people for periods of time. Consequently, their current coldness is transient. Meanwhile, they share a strong tie through their mother, who, as family matriarch, reciprocally upholds strong ties to her children. This tie goes beyond the cool relationship they presently have due to a recent spat, and sustains the foreign influence security concerns raised by the sister's position as a Russian citizen, employee, and landowner. Any pressure brought to bear on either sibling could be generated through their mother as a conduit of considerable influence and obligation.

I have duly considered all the exhibits and relevant facts in this case. There is no evidence that Applicant is disloyal. However, based on the facts presented, personal conduct and foreign influence security concerns linger. As noted, any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. Clearance is denied.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge