



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-03776
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
For Applicant: *Pro se*

07/06/2012

Decision

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

On February 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under 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 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 her March 14, 2011, response to the SOR, Applicant admitted two of the three allegations raised and partly admitted the third allegation raised under Guideline B. She also requested an administrative determination. Department Counsel completed a memorandum and file of relevant material (FORM), which included nine attachments, on April 16, 2012. He also requested administrative notice of certain government-issued materials concerning the country at issue, the Russian Federation (Russia). Applicant timely responded to the FORM on May 21, 2012. The case was assigned to me on June 1, 2012. Based on a review of the case file, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

Administrative Notice

The Government requested administrative notice of certain facts and materials regarding Russia. Its request (FORM, Item 8) included 10 attachments (I-X), 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. They were considered in their entirety.

Of particular applicability in this proceeding, it is noted that Russia achieved independence with the dissolution of the former Union of Soviet Socialist Republics (USSR) in August 1991. Moreover, it is recognized that the relationship between the United States and Russia is complicated. The two countries share common interests on a variety of concerns and policies, including the reduction of strategic arsenals, prevention of the spread of weapons of mass destruction, and combating terrorism. Modern Russia, however, continues the former USSR's tradition of engaging in high profile espionage missions against the United States. It has an active, ongoing information collection program specifically targeting the United States. Russia has long been one of 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 caught.¹

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, and Syria. 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

Applicant is a 51-year-old who works for a defense contractor in a part-time capacity reviewing government contracts. She is a U.S. citizen by birth. Applicant earned a high school diploma. She was briefly married from 1984 to 1987, then remarried from 1989 until April 1996. In November 1996, she married a colleague from work, a former USSR diplomat who defected from the former USSR in 1989. At the time, he was a divorced father of one child. After their marriage, the couple had their first child in 1997; a second child followed in 2003.

While serving as a diplomat for the USSR from 1981 to 1989, Applicant's current husband was a member of the USSR Communist Party and worked for a ministry that

¹ Ex. 8, Attachment IV (U.S. Dep't of Justice, Office of Public Affairs, *Ten Alleged Secret Agents Arrested in the United States*, dated Jun. 28, 2010).

had “important and sensitive responsibilities for foreign affairs and national security.”² He terminated his Communist Party membership before seeking asylum in the United States.³ He became a naturalized U.S. citizen in 1996.

Since he arrived in the United States, Applicant’s husband has maintained personal, governmental, and business contacts in Russia.⁴ His contacts with Russian government officials were related to his employment with U.S. corporations.⁵ An indeterminate percentage of his personal, business, and governmental contacts were cultivated since he started work in the United States. He traveled to Russia more than 20 times between 1998 and 2002. As part of a work assignment, he lived in Russia from the autumn of 2002 through the winter of 2003, during which time he had “regular contact with Russian government officials employed by an important Russian government agency.”⁶ Since about April 2011, he has been employed with a private entity that supports U.S. Government projects and has no business ties to Russia.⁷

Since their marriage, Applicant and her husband have jointly visited Russia on multiple occasions.⁸ The primary purposes for these visits were to promote Applicant’s

² FORM, Item 7, ISCR Case No. 06-13973 (Mar. 13, 2008), at 3 (Decision of an administrative judge concerning Applicant’s husband and analyzed under the previously applicable adjudicative guidelines). Applicant’s husband has not had any contact with former employees from that ministry since 1989. Applicant denies that his diplomatic service was in national security positions, but failed to provide evidence as to what areas his diplomatic service involved. See Form, Item 4, Response to the SOR. At one point, he was a diplomat working in Liberia for the USSR government, but Applicant does not know what his duties included. FORM, Item 6, Interrogatories, at 3; FORM, Item 9, Affidavit (No. 12, 2009) at 2. He was granted asylum protection in the United States “to protect him from what he claimed were the life-threatening dangers awaiting him in the USSR should he be forced to return there.” FORM at 5.

³ FORM, Item 7, ISCR Case No. 06-13973 (Mar. 13, 2008), at 3.

⁴ Applicant objects to the Government’s description of these contacts as “significant and extensive.” Consequently, it is only noted that her husband has maintained contacts in Russia. However, it is further noted that her lack of evidentiary elaboration does not contribute to a full analysis of these contacts.

⁵ FORM, Item 7, ISCR Case No. 06-13973 (Mar. 13, 2008), at 3.

⁶ FORM, Item 7, ISCR Case No. 06-13973 (Mar. 13, 2008), at 3. Applicant objects to the Government’s failure in the memorandum prefacing the FORM to note that this period of residency in Russia was job-related, stating “[i]t seems you conveniently left this out so that it looks as though my husband, the defector, chose to living [sic] in the country from which he defected.” Response to FORM at 1. It is noted that the fact her husband was in Russia as part of a work assignment is fully detailed in the FORM at Items 6, 7, and 9.

⁷ Response to FORM at 1.

⁸ Applicant wrote that she has visited Russia five times, the last time having been in 2011. She did not visit with her in-laws on the 2011 trip. Response to FORM at 2. However, she and her husband visited his parents in Russia in 2002 and 2008 on foreign travel lasting from 10 to 18 days. FORM, Item 6, Interrogatories, at 4; see also Response to FORM at 2. It is unclear whether she visited with her in-laws in 2003 on either her July 2003 to September 2003 trip to Russia or her April 2003 trip to Russia. See FORM, Item 5, Security Clearance Application (Oct. 31, 2008), at 25 of 34.

husband's business efforts or to visit his parents, who are citizens and residents of Russia. Applicant's husband "keeps in regular contact" with his father and mother in Russia, as well as annual contact with an aunt and cousin in Russia.⁹ Applicant's father-in-law has been retired for over 15 years, but was a government official in the former USSR.¹⁰ He receives a disability pension. Applicant's father-in-law has visited Applicant and her husband at least twice. Applicant's mother-in-law is a recognized poet who hosted a radio poetry show on an independent Russian station over a decade ago. It is unclear whether she has had past ties to any government, or whether she receives or is dependent upon a state pension. She has visited Applicant and her husband in the United States at least three times. Applicant speaks with her in-laws "about once a month."¹¹ As of 2008, Applicant's in-laws were unaware that Applicant worked or has ever held a security clearance.¹² As of November 2009, Applicant's in-laws derived income from the rental of a Russian apartment owned by Applicant's husband.¹³ There is no documentary evidence indicating that this arrangement has changed.

In her response to the FORM, Applicant objected to the Government's characterizations of her husband's past and current employment, his Russian government and business contacts, and both his parents and their contact with Applicant and her husband. She also stressed that today's Russia is different from the former USSR "administratively, politically, and in any other way possible. . . ."¹⁴ Her objections are duly noted and, where supported or uncontradicted, incorporated herein.

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

⁹ Response to FORM at 2.

¹⁰ Response to FORM at 2; FORM, Item 7, ISCR Case No. 06-13973 (Mar. 13, 2008), at 3..

¹¹ Response to FORM at 2. (Applicant does not consider this to be a "fairly regular basis.")

¹² FORM, Item 6, Interrogatories, at 4. It is unknown whether Applicant's in-laws now know of her work.

¹³ FORM, Item 9, Affidavit (Nov. 12, 2009), at 4-5. Applicant notes that her husband still owns this property to support her contention that her "husband does not face any legal action from Russian government because of [his] defection." In contrast, in ISCR Case No. 06-13973 (Mar. 13, 2008), the administrative judge found that Applicant's husband had only a partial interest in the property, valued at \$8,000 to \$9,000 which derived about \$200 in monthly income from the apartment, and that this interest "most likely" became the property of the Russian Government in 2007 because of his acceptance of political asylum.

¹⁴ Response to FORM at 1.

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 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. . . ." ¹⁵ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ¹⁶

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."¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁸ The decision to deny an individual a security clearance is not necessarily

¹⁵ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁷ *Id.*

¹⁸ *Id.*

a determination as to the loyalty of an applicant.¹⁹ 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 B (Foreign Influence) to be pertinent to the case. Conditions pertaining to this guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

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.

The country at issue is Russia. Russia is known to conduct espionage and to actively collect sensitive information concerning the United States. Terrorism is a genuine concern within certain parts of its borders. Consequently, heightened scrutiny is warranted in this case.

Applicant's in-laws are residents and citizens of Russia. Applicant maintains monthly contact with her in-laws, and Applicant's husband keeps in "regular contact" with them. In these cases, short of evidence to the contrary, familial relations between an applicant's spouse and that spouse's immediate family abroad are presumptively imputed to the applicant. Regardless, such contacts with foreign nationals are sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. Moreover, Applicant's in-laws are notable personages in Russia, where they are citizens and residents. Her father-in-law is a retired government official from the USSR era, while her mother-in-law is a distinguished poetess. While it is unknown whether the mother-in-law receives a state pension, the unelaborated facts indicate that the father-in-law receives a disability pension. Both share in the proceeds of their son's rental apartment, which is located in Russia. Furthermore, while Applicant disagrees with the characterization that her husband has significant and extensive personal, governmental, and business contacts in Russia, she failed to better depict those contacts or describe her own relations and

¹⁹ Executive Order 10865 § 7.

interaction with them. Consequently, 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.

The true depth of the relationships between Applicant, her husband, and his parents is ill-defined in the record. It is known, however, that Applicant's husband keeps regular contact with his parents, that he entrusts them with the proceeds from his Russian rental property, and that Applicant speaks with them on a monthly basis. They have visited each other in Russia or the United States on multiple occasions in the past decade. Given their frequency of contact, and lacking evidence to the contrary, it may be deduced that familial relations are warm. Regardless of whether Applicant's regular contact with her in-laws is the result of affection or merely a sense of obligation, either situation is sufficient to place her in a position to have to choose between the interests and needs of her Russian family members and the United States. It is also known that both of Applicant's in-laws have achieved some level of notoriety in Russia, and that Applicant's spouse defected from Russia and sought asylum in the United States while serving as a diplomat under the previous Russian government. Such factors may have the potential of raising the risk that they may be used as instruments of coercion. Under these facts, 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 spouse's relationship with the current Russian government is ill-defined. He defected from the former USSR and sought asylum to avoid life-threatening repercussions should he return. Now, under the new Russian Government, he has traveled extensively back to Russia and lived there for a year, apparently without fear of repercussions. For nearly a decade, his work focused on assignments related to Russia. He still retains ownership of an income-producing apartment in Russia. He understandably maintains contact with his parents, an aunt, and a cousin who reside in Russia. In contrast, he has become a naturalized U.S. citizen and he maintains his current marriage in the United States, where his wife and children reside as citizens. He currently works in the United States. On balance, these scant facts may suggest that his loyalties, at best, swing in favor of the United States. However, his continued ties with Russian family, property, and business continue to raise concerns about his foreign

interests. More importantly, the record is nearly bereft of information concerning the Applicant and her connections to the United States. As a result, there is insufficient evidence showing that she would resolve any conflict of interest in favor of the United States. Consequently, there are insufficient facts to raise 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*).

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.

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. In relying on the written record, however, Applicant has presented scant facts about herself. Applicant was born in the United States. She is a mature woman with a high school education. She was married twice before meeting her present husband at work in 1996, around the time he became a naturalized U.S. citizen. The couple has two children. Applicant works part-time reviewing contracts for a defense contractor. She is highly supportive of her husband, who, until recently, worked in the private sector in support of U.S.-Russian partnerships and traveled to Russia extensively. She has traveled to Russia at least five times. During some of these trips, she has visited with her in-laws, with whom she otherwise converses by telephone on a monthly basis.

In these cases, after the Government raises disqualifying conditions, it is left to an applicant to provide mitigating or extenuating facts. Here, Applicant failed to do so. Many relevant questions yet remain. In focusing almost exclusively on her husband and in-laws, Applicant failed to provide corroborating statements regarding her own commitments, connections, and loyalty to the United States, as opposed to her support of her spouse, his family, and his foreign interests. Moreover, aside from questions related to Applicant's spouse's role as a diplomat for the USSR, it is unclear whether his Russian government, business, and personal contacts were solely acquired in the course of his business in the United States, or represent reinitiated contacts from his days before defecting to the United States. Further, whether her relationship with her in-laws is genuinely warm or perfunctory is unexplored. As is, the record reveals a stereotypical portrayal of a close, but geographically distant family. In addition, an administrative judge's decision in 2008 stating that a Russian apartment partly owned by Applicant's spouse most likely became state property in 2007 stands in contrast to

Applicant's 2009 statement that he still owned an income-generating apartment of unknown value in Russia. With so many questions unanswered, I conclude that Applicant has not carried her burden of mitigating the foreign influence security concerns raised.

My conclusion is based on the law, as set forth in *Department of Navy v. Egan* (484 U.S. 518 (1988)), a thorough consideration of the whole person factors, and my analysis of the facts in light of the AG. I particularly note the paucity of relevant and material facts presented, and the heavy burden placed on an applicant in this process. The denial of a security clearance is not necessarily an assessment of an applicant's loyalty. It is merely an indication that the applicant has not met the strict guidelines established for issuing a clearance. Any reasonable doubt about whether an applicant should be allowed access to classified information, however, must be resolved in favor of protecting such information. 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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For 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