



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



In the matter of: )  
)  
) ISCR Case No. 10-08415  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

October 11, 2011

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Foreign Influence concern. She is close to her mother and sister, who are citizens and residents of Russia. This situation raises a heightened risk of foreign exploitation and potential conflict of interest with Applicant's obligation to safeguard classified information. Clearance is denied.

**Procedural History**

On March 22, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.<sup>1</sup> The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges the security concern under Guideline B (Foreign Influence).

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<sup>1</sup> This action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

On April 11, 2011, Applicant responded to the SOR (Answer). She admitted the sole allegation under Guideline B that her mother and sister are citizens and residents of Russia. She requested a hearing.

On May 28, 2011, Department Counsel filed its ready-to-proceed. After coordinating with the parties, I scheduled the hearing for July 21, 2011. As a time management tool, I issued a prehearing order requiring the parties to serve one another and me their anticipated exhibits prior to the hearing.<sup>2</sup>

At hearing, Department Counsel offered five exhibits, which were marked as Government Exhibits (GE) 1 through 5. GE 1, 2, and 5 were admitted into evidence without objection. Applicant objected to a portion of GE 3 regarding her finances. Department Counsel agreed said portion was not relevant and, thus, I sustained the objection.<sup>3</sup> Applicant also objected to GE 4, which is the Government's request for administrative notice of facts regarding Russia. After the hearing, the Government provided the official U.S. source documents referenced in GE 4. These documents are marked as GE I through GE XI. Applicant's objection to GE 4 is overruled. The facts administratively noticed are set forth in my findings of fact. Applicant offered four exhibits, which were marked and admitted into evidence as Applicant's Exhibits (AE) A through D.<sup>4</sup> The transcript (Tr.) was received on August 1, 2011.<sup>5</sup>

### Findings of Fact

Applicant is 38 years old. She is married and has one child, who is seven years old. Applicant was born, raised, and educated in Russia. In 1988, when Applicant was 15 years old, she traveled to the U.S. as part of one of the first student exchange programs between the U.S. and the former Soviet Union. Applicant was impressed with the U.S. and promised herself that she would return in the future to live in the U.S. permanently. Applicant returned to Russia, where she received her undergraduate and master's degrees in applied mathematics, *summa cum laude*. She also studied English, because she knew how valuable such language skills, in addition to her scientific background, would be in her "future life in the USA."<sup>6</sup>

Applicant worked in Russia from 1995 to 1999. She met her husband, a U.S. citizen, in April 1999. She immigrated to the U.S., and they married in November 1999.

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<sup>2</sup> Hearing Exhibit I.

<sup>3</sup> Tr. at 29-34.

<sup>4</sup> AE D is titled "Answer to Statement of Reasons." This is Applicant's personal statement that she read from at hearing. Her actual Answer was submitted on April 11, 2011. Tr. at 55-56.

<sup>5</sup> I have corrected the following minor typographical errors in the transcript: page 34, line 6, inserted "Government Exhibit 4", for "Hearing Exhibit 3"; page 36, line 24, inserted "and", for "out of".

<sup>6</sup> AE D; Tr. at 45-47, 57, 60; GE 1.

Applicant applied to and was accepted to a prestigious U.S. school to continue her studies. She attained her PhD in 2007. She worked as a graduate assistant while completing her degree and is currently working for a U.S. bank.<sup>7</sup>

Applicant lives with her husband in the home they purchased in 2005. All her property, personal and real, is in the United States. Applicant was granted U.S. citizenship in 2008. As of the hearing, Applicant had surrendered her Russian passport and renounced her Russian citizenship.<sup>8</sup>

Applicant's mother and sister are citizens and residents of Russia. Applicant's mother worked for the Russian government and retired after about 40 years of service. She receives a pension from the Russian government and supplements that income through part-time private work. Applicant speaks frequently with her mother. Applicant's mother visits her here in the U.S. at least once a year. Applicant's sister is 45 years old and has a part-time job working for a private company in Russia. Applicant is less close to her sister than her mother, but they speak via e-mail at least twice a month. When Applicant travels to Russia, she visits with her mother and sister. Applicant has other distant relatives living in Russia, but she is not close to them.<sup>9</sup>

U.S.-Russian relations have gone through dramatic changes over the past century: from military alliance during World War II, to outright hostility during the Cold War, to its current state of mutual cooperation in areas of shared interest.<sup>10</sup> However, several areas of concern regarding Russia remain. One such area of concern is Russia's human rights record, which the U.S. Department of State notes is "uneven and poor in some areas."<sup>11</sup> The judiciary is often manipulated by the authorities and the Russian government continues to infringe upon its citizen's rights.<sup>12</sup> Another area of vital concern is Russia's intelligence gathering history targeting the United States, which remains active and strong.<sup>13</sup>

Applicant testified that she would alert U.S. authorities if someone tried to leverage her for information through her family in Russia. She testified as follows:

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<sup>7</sup> Tr. at 47-52, 60; AE A and D.

<sup>8</sup> Tr. at 50-51, 73-74; GE 1 and 2; AE D.

<sup>9</sup> Answer; Tr. at 62-71; GE 3 at I-56-I57.

<sup>10</sup> GE IX and X.

<sup>11</sup> GE X at 7.

<sup>12</sup> GE X and XI.

<sup>13</sup> See, e.g., GE V. See also, GE I and Tr. at 34-35 and 53-54 (Applicant stipulates that Russia is hostile to U.S. interests, engages in espionage against U.S., and violates its own citizens' rights).

I do miss my family in Russia, I would say honestly, but I have never missed Russia, itself. I don't have any nostalgic feelings. And if in the unfortunate event of being blackmailed by stressing my Russian family, I strongly believe that my only chance to help them is to ask United States for help. And then (follow) the required procedures. First of all, Russia is known for violating human rights and treating badly general population. I also would never trust anybody who is doing a blackmail. So if I am being approached with being danger in my family, it is a horrible event but nothing I can do, just trust the United States to help, because Russia will definitely not -- sorry. So please consider my loyalty to the United States, my honesty and integrity in making this decision.<sup>14</sup>

### **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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 safeguard classified information. Such decisions entail a certain degree of legally permissible

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<sup>14</sup> Tr. at 53-54.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.”

## **Analysis**

### **Guideline B, Foreign Influence**

The foreign influence concern is set forth at AG ¶ 6, as follows:

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.

In light of the Russian government’s human rights record and its intelligence gathering history against the United States, Applicant’s strong familial ties to Russia raise the above concern. Applicant’s foreign familial ties also establish the following disqualifying conditions under 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; and
- (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.

AG ¶ 8 sets forth a number of mitigating conditions that could mitigate the foreign influence concern. I have considered all the mitigating conditions and find the following warrant further discussion:

- (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

- (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

The Appeal Board recently reversed a favorable decision involving an applicant who had familial ties to Russia through his in-laws, because the judge failed to consider Russia's human rights record and intelligence gathering history against the United States. ISCR Case No. 09-06831 at 4 (App. Bd. Mar. 8, 2011). The Appeal Board cited to facts regarding Russia's poor human rights and intelligence gathering history, which it gleaned from the same official U.S. government documents that were submitted in this case. *Id.*<sup>15</sup> At the same time, the Appeal Board has repeatedly made clear that there is no *per se* rule against applicants with familial ties to hostile countries, such as Russia. Instead, an applicant with familial ties to a hostile country bears a "heavy burden" in mitigating the foreign influence concern raised by such foreign familial ties. See, e.g., ISCR Case No. 07-00029 (App. Bd. Dec. 7, 2007).<sup>16</sup>

Applicant failed to mitigate the foreign influence concern. She clearly has no love for the Russian government and has strong ties to the United States, including property and her immediate family. She has taken concrete steps to distance herself from Russia by surrendering her Russian passport and renouncing her Russian citizenship. However, she is close to her mother and sister who still reside in Russia. Both of Applicant's family members, especially her mother who receives a government pension, are subject to the whims of the Russian government. In light of the nature of the country at issue and Applicant's relationship with her mother and sister, AG ¶ 8(a) does not apply. Further, although Applicant forcefully asserted that she would resolve any potential conflict in favor of the United States, I am bound by precedent to give such a

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<sup>15</sup> See *also*, ISCR Case No. 06-26489 at 2 (App. Bd. Jul. 16, 2009) ("At least since 1997, Russia has targeted U.S. technologies and has sought to obtain protected information through industrial espionage. The Russian Federal Security Service operates outside Russia by targeting national security and environmental researchers. The Russian government conducts electronics surveillance, including the monitoring of internet and e-mail traffic.").

<sup>16</sup> ISCR Case No. 01-26893 at 10 (App. Bd. Oct. 16, 2002) ("As a matter of common sense and sound risk management under the 'clearly consistent with the national interest' standard, an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk.").

statement little weight.<sup>17</sup> AG ¶ 8(b) does not apply. Applicant's familial ties to Russia remain a security concern.

### **Whole-Person Concept**

As noted above, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. This is generally referred to as the "whole-person" concept. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>18</sup> In weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, . . . *[e]ven good people can pose a security risk because of facts and circumstances not under their control.* For example, . . . an applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country hostile to the United States.<sup>19</sup>

I have considered and given due weight to all the favorable and extenuating factors in this case. Applicant fell in love with this country at a young age and has now recognized the dreams of her youth by becoming a U.S. citizen. However, this favorable evidence, as well as the other mitigating record evidence, does not outweigh the security concern at issue. At the same time, this adverse determination is *not* a comment on Applicant's patriotism, but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member.<sup>20</sup> Accordingly, in light of the security risk posed by Applicant's familial ties to Russia, I resolve the concern raised by this situation against Applicant.

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<sup>17</sup> ISCR Case No. 04-07766 at 4 (App. Bd. Sep. 26, 2006)

<sup>18</sup> (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.

<sup>19</sup> ISCR Case No. 01-26893 at 9-10 (emphasis added).

<sup>20</sup> ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009)

**Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

- Paragraph 1, Guideline B (Foreign Influence):                      AGAINST APPLICANT
- Subparagraph 1.a:    Against Applicant

**Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge