



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-08992
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

March 15, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 41-year-old employee of a defense contractor. His wife is a citizen of Ukraine and she has several family members in both Ukraine and Russia. Applicant mitigated the Government’s security concerns under Guideline B, Foreign Influence because his ties to the U.S. are strong and he has little contact with his foreign relatives. Applicant’s eligibility for a security clearance is granted.

On October 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. 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 Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 29, 2011, and requested a hearing before an administrative judge. The case was assigned to me on December 16, 2011. DOHA issued a Notice of Hearing on January 6, 2012. I convened the hearing via

video teleconference with the Applicant's location abroad as scheduled on January 24, 2012. The Government offered Exhibits (GE) 1 to 5. Applicant did not object to GE 1 to 4 and they were admitted. Applicant objected to GE 5, but it was admitted over the Applicant's objection. (Tr. 22.) The Government requested administrative notice be taken of certain facts relating to Russia as contained in Hearing Exhibits (HE) I.<sup>1</sup> Applicant had no objection and I took administrative notice of the documents. Applicant testified on his own behalf. DOHA received the hearing transcript (Tr.) on February 6, 2012.

### **Findings of Fact**

DOHA alleged under Guideline B, Foreign Influence: that Applicant's wife is a citizen of the Ukraine, she owns an apartment in Ukraine, and she stands to inherit a second apartment (SOR ¶¶ 1.a.); that Applicant's father-in-law and mother-in-law are citizens of Russia residing in Ukraine (SOR ¶ 1.b. and 1.c.); that Applicant's aunt is a citizen and resident in Russia (SOR ¶ 1.d.); that Applicant's wife has two uncles who are citizens and residents of Russia and that one uncle works for a state research and production space center in Russia (SOR ¶ 1.e.); that Applicant's wife's cousin and her husband are citizens and residents of Russia (SOR ¶ 1.f.); and that Applicant and his wife visit relatives in Ukraine and Russia every other year (SOR ¶ 1.f.). Applicant admitted the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 41-year-old employee of a defense contractor. He was born in the United States and is solely a U.S. citizen. He is the son of a retired sergeant major in the Army who is buried in Arlington National Cemetery. His father served in the Army for over 21 years. Applicant served in the Air Force for approximately four years, but separated early with a General Under Honorable Conditions discharge. Applicant has worked abroad as a defense contractor for the past 14 years. He has had no disciplinary write-ups or violations during his tenure with the government contractor. All of his banking accounts are in the United States. He owns a home in the United States, in which his mother resides. He has two siblings that reside in the United States. Applicant travels to the United States every other year to visit his family there. (GE 1; Tr. 31-39.)

Applicant has been married to a Ukrainian citizen for the past nine years. He met his wife in September 2002, when he answered an email for an on-line dating service. The dating scene at his overseas-duty station was very limited and he sought to expand his prospects. Through the dating service, he was introduced to his wife. His wife worked as a secretary at a paper mill. Applicant and his wife corresponded through email in English for a couple of months. Eventually, they began talking on the phone on the weekends, as well as writing to each other. Six-to-eight months after they started corresponding, they decided to meet in Germany. The trip was a month long vacation from the Applicant's duty station. Shortly after their meeting, they decided to marry

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<sup>1</sup> Government Counsel failed to submit Administrative Notice materials directly pertaining to Ukraine.

because they got along so well. After their marriage, Applicant returned to his duty station and his wife returned to Ukraine. Applicant's wife joined him at his duty station approximately one year after their marriage, when her immigration paperwork had been approved. She is currently a Ukrainian citizen. She holds a U.S. green card. She is not yet eligible to apply for U.S. citizenship. (GE 1; GE 2; Tr. 40-49.)

Applicant's wife owns a tiny, one room flat located in the Ukraine that she inherited from her grandmother. She also stands to inherit another tiny two-room flat from her mother. Applicant estimates the total value of the two flats to be \$10,000. Applicant's wife intends to dispose of the flats after her mother passes away. (GE 2; Tr. 51-52.)

Applicant's wife has family in both Ukraine and Russia. Applicant has traveled to Ukraine three-to-four times and to Russia twice to meet her family. He testified, "hopefully, I am done with that." He indicated he has no plans or desire to visit Russia again. He indicated that his wife will visit her mother in Ukraine next year to renew her passport, but that he will not be traveling with her. He also indicated that he seldom speaks about work and that his foreign relatives do not know what he does for a living. (GE 2; Tr. 50, 66, 70-72.)

Applicant's mother-in-law is a citizen of Russia, living in Ukraine. She is approximately 66 years old. She knows no English and Applicant is unable to speak with her because he knows no Russian. She moved to Ukraine from Russia when she was a child and was employed in Ukraine as a nurse. She is now retired. She is supported by a pension she receives from her city of residence. Applicant's wife communicates with her mother approximately every four-to-six months by phone and email. Applicant is unable to understand their conversations or read the emails because they are strictly in Russian. Neither Applicant nor his wife provides financial support for his mother-in-law. (GE 2; Tr. 57-59.)

Applicant's wife has been estranged from her father since she was approximately 12 years old. Applicant has never met him and they have no relationship. Applicant's wife does not even know if her father is still living. (GE 2; Tr.56-57.)

Applicant's wife has an aunt that is a citizen and resident of Russia. Applicant does not know her name. He estimates that she is approximately in her late 60's or early 70's. Applicant has only met his wife's aunt twice, for a few hours each occasion. He was unable to communicate with her because she does not speak English. Neither Applicant nor his wife have communicated with this aunt since their visit to Russia in approximately 2009. (GE 2; Tr. 61-63.)

Applicant's wife has two uncles in Russia. One uncle she has not seen or communicated with since she was an infant. The other uncle is married to her aunt, addressed above. This uncle is identified as employed at the state research and production space center in Russia. He used to be a metal cutter there. He is 70 years old and has been retired for a number of years. Applicant met him briefly on one of their

visits to Russia. Applicant testified that the uncle got drunk and passed out during their visit. Neither Applicant nor his wife have had any contact with him since that visit. (GE 2; Tr. 67-72.)

Applicant's wife's cousin and her spouse are citizens and residents in Russia. The cousin is a stay-at-home mom and her husband used to work for a church. Applicant does not speak to either relative by phone or email. He met them twice, when he visited Russia. He and his wife stayed with them during their trips to Russia. Applicant's wife speaks to her cousin every four-to-five months on birthdays or other special occasions. Neither Applicant nor his wife provides her cousin's family any financial support. (Tr. 63-65.)

Professional and social references indicate that Applicant demonstrates sound judgment, is reliable, trustworthy, and complies with the rules and regulations. References further indicated Applicant's allegiance to the United States is unquestionable. (GE 4.)

## **Russia<sup>2</sup>**

Russia's intelligence services conduct a range of activities to collect economic information and technology from U.S. targets. Russia remains one of the two most aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly in cyberspace. Non-cyberspace methods include targeting of U.S. visitors overseas, especially if the visitors are assessed as having access to sensitive information. Moscow's intelligence efforts include espionage, technology acquisition, and covert action efforts to alter events abroad.

Laws in Russia allow officials to enter private residences only in the cases prescribed by federal law, however authorities do not always observe these restrictions in practice. Officials and others engage in electronic surveillance without judicial permission and enter residences without warrants. Russian authorities are able to monitor calls and have remote access to telecommunication companies databases, enabling police to track private email communications and internet activity.

Russia's human rights record remains uneven and poor in some areas. Abuses reported include: reports of attacks on killings of journalists; physical abuse by law enforcement officers; extremely harsh and at times life-threatening prison conditions; and arbitrary detention and politically motivated imprisonments. Corruption is widespread throughout the government and law enforcement.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

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<sup>2</sup> All of the information about Russia is contained in Hearing Exhibit I.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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 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, 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 and has the ultimate burden of persuasion to obtain a favorable clearance 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. The following is potentially applicable:

- (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;
- (d) Sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

AG ¶¶ 7(a) and 7(d) require both the presence of foreign contacts and that a heightened risk of foreign inducement, manipulation, pressure, or coercion be present. Applicant has foreign family members who are citizens and/or residents of Russia and Ukraine. Applicant's wife is a citizen of the Ukraine, residing with the applicant. She has ties to her family in both Ukraine and Russia. His father-in-law and mother-in-law are citizens of Russia residing in Ukraine. His aunt-in-law, two uncles-in-law, and his cousin-in-law's family are all citizens and residents of Russia. One uncle-in-law worked for a state research and production space center in Russia. Applicant has visited Russia twice and met with his wife's family on both trips. Government Counsel introduced sufficient evidence on Russia's foreign collection attempts and human rights abuses to

establish a heightened risk relating to Applicant's immediate family members in Russia. No evidence of heightened risk was presented or established with respect to Ukraine. Applicant's contacts with Russia raise security concerns under AG ¶ 7(a) and 7(d).

Applicant's wife owns one tiny flat in Ukraine and stands to inherit a second tiny flat in Ukraine. The financial interests in these two properties are approximately \$10,000 and are not substantial. Further Department Counsel failed to establish a heightened risk present in Ukraine. AG ¶ 7 (e) does not apply.

I have also analyzed all of the facts and considered all of the mitigating conditions under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationship 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 and the interests of the U.S.;

(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 interests in favor of the U.S. interest; and

(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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. Russia is known to target U.S. intelligence information. Further, Russia's human rights record demonstrates areas of concern and there is a risk for U.S. citizens traveling there.

Applicant has a close, familial relationship with his wife, who is a citizen of Ukraine and resides with him. He has little to no personal relationship with any of his in-laws. He lacks the desire and language skills to communicate with his in-laws. However, his wife has close emotional ties to her cousin and her mother. They communicate several times per year, and Applicant's wife intends to visit her mother every other year. The same cannot be said of her father, aunt, and uncles. There are no apparent ties of affection that bind Applicant or Applicant's wife with her father, aunt, and her uncles. She has not seen her father since she was an adolescent and does not even know if he

is alive. She has not seen one of her uncles since she was an infant. Neither Applicant nor Applicant's wife has had contact with the remaining aunt and uncle in Russia since their brief visit in 2009. However, I find the nature of the relationship that Applicant has with his wife, and tangentially through his wife to his mother-in-law and cousin-in-law, is more than casual and infrequent. Therefore, I cannot find that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his wife, mother-in-law, and cousin-in-law. AG ¶¶ 8(a) and 8(c) apply only with respect to Applicant's father-in-law, aunt, and uncles.

Applicant has little loyalty to or contacts with Russia, other than his travel there twice to meet his wife's family. He does have close ties of affection to his wife, who loves her mother residing in Ukraine and her cousin residing in Russia. However, he also has deep and longstanding relationships and loyalties to the United States. His father served over 21 years in the Army and is buried in Arlington National Cemetery. His mother and siblings reside in the United States and his mother lives in Applicant's home. He travels to the United States to see her every other year. Applicant served in the Air Force. He has all of his assets in the U.S. He has dedicated his career to serving the United States as a government contractor. Applicant's loyalties to and in the United States indicate that he can be expected to resolve any potential future conflicts of interest in favor of the U.S. Mitigating condition AG ¶ 8(b) 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):

- (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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.



I have carefully considered all of the evidence and I am convinced Applicant's roots are firmly planted in the United States. Applicant was born and has lived all of his life in the U.S. Despite his marriage to a Ukrainian citizen with familial ties to Russia, he remains committed to serving the United States as a government contractor. He is a trustworthy, rule-oriented individual. I am also convinced that should there ever be a conflict of interest, Applicant would clearly resolve it in favor of this country due to his steadfast commitment to the United States.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Foreign Influence.

### **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-1.g:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge