



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



In the matter of:)
)
) ISCR Case No. 11-01470
)
Applicant for Security Clearance)

Appearances

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

December 29, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations concern. His financial problem was due to the economic downturn that caused his business to fail and his house to lose half its value. He has handled his financial situation in a responsible manner and established that his finances are under control. However, he failed to mitigate the Foreign Influence concern raised by his significant connections to Russia. His wife's parents and her best friends are resident-citizens of Russia. Clearance is denied.

Procedural History

On August 23, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.¹ The basis for this decision is set forth in a Statement of Reasons (SOR) that alleges the security concerns under Guideline B (Foreign Influence) and Guideline F (Financial

¹ 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.

Considerations). Applicant submitted a detailed response on September 26, 2011 (Answer). He denied five of the seven debts alleged under Guideline F, admitted all the allegations under Guideline B, and requested a hearing.

On November 1, 2011, Department Counsel filed its ready-to-proceed. After coordinating with the parties, I scheduled the hearing for December 7, 2011, via video teleconference.² At hearing, Department Counsel offered Government Exhibits (GE) 1 through 7, which were admitted into evidence without objection.³ Department Counsel also submitted GE I through X for administrative notice regarding the Russian Federation (Russia).⁴ The Government stipulated that the five debts alleged in SOR ¶¶ 2.a, 2.b, 2.d, 2.e, and 2.g had been satisfied. Applicant appeared at the hearing, called his wife as a witness, and testified on his own behalf. He offered Applicant's Exhibits (AE) A through R, which were admitted into evidence without objection.⁵ The transcript (Tr.) was received on December 14, 2011.⁶

Findings of Fact

Applicant is 50 years old. He was born overseas on a U.S. military installation where his father was stationed with the U.S. Army (USA). He is married with a two-year-old child. He graduated high school in 1979 and has taken some college level courses.⁷ He served in the submarine forces of the U.S. Navy from 1980 to 1988, separating with an honorable discharge. He held a security clearance the entire time without incident,⁸ and was involved in a number of significant operations that "contributed significantly to the overall national security."⁹

In August 2007, Applicant started working for his former employer, a government contractor. He was granted an interim security clearance and handled classified

² 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. See Hearing Exhibit (HE) I.

³ GE 4 is Applicant's third interrogatory response. It is a 255-page document. I have inserted page numbers for ease of reference in case appellate review is required.

⁴ Department Counsel submitted a summary of facts from GE I - X that the Government asks I take administrative notice. See HE II. The facts administratively noticed are set forth in my findings of fact.

⁵ AE A – F were originally submitted by Applicant with his Answer. Following the hearing, Applicant submitted his prepared remarks that he read into the record. As there was no objection, I admitted this document as AE S.

⁶ I made pen-and-ink changes at 15, 24-26, 34, and 75 to correct minor typographical errors.

⁷ GE 1. (Applicant has been married twice before and has two adult children); GE 2, *Subject Interview*, April 29, 2010 (4/10 SI); AE S.

⁸ GE 1 at 24-25, 56-57; GE 4 at 253 (DD Form 214); AE S; Tr. at 133.

⁹ GE 4 at 254.

information without incident. His employment contract ended in October 2009, and he was able to secure another government contracting job. He has been with his current employer since October 2009. His access to classified information, which was granted to him on an interim basis in 2007, was denied when the SOR was issued in August 2011.¹⁰ His family, co-workers, and friends all hold him in high esteem and recommend him for a clearance.¹¹ A retired Command Sergeant Major, USA, who has worked with Applicant for the past 18 months, states:

I have the utmost respect for (Applicant) as a trusted friend and a great American. He is one of the very few people that I know who inspires courage, hard work and is driven by commitment. He is a person of impeccable character, integrity and can-do attitude. In addition, he is a patriot of the highest order . . . I have full confidence in him as an American and I would trust him with my life.¹²

Financial Concerns

Applicant purchased his home in October 2006 in pursuit of the American dream of home ownership. The home cost \$307,000. At the time, Applicant was self-employed, operating a niche business restoring classic cars. The business generated sufficient income to cover Applicant's mortgage until February 2007 when "the recession hit, and people weren't paying their invoices . . . and it started putting (Applicant) in a position where (he) couldn't pay (his) bills . . ." ¹³ Applicant's dire financial situation was further complicated due to costly repairs to his new home. He started looking for a steady job and filled out several employment applications.¹⁴

By the summer of 2007, Applicant had exhausted his savings trying to keep the business afloat and making some of the needed repairs to his home. He was offered a position with a government contractor, but the job required him to move out of state. He was unable to rent his home and could not sell it due to the collapse of the local housing market, which had robbed the home of half its value in less than a year's time. As he had no other job prospects, Applicant accepted the out-of-state job offer. He rented a room for \$400 and kept his expenses as low as possible, in order to maintain two households. He turned to credit cards to pay his bills, including his mortgage. He eventually fell behind on his credit card payments and defaulted on his mortgage.¹⁵

¹⁰ GE 1; Tr. at 15, 30-31, 47, 102-104, 133.

¹¹ AE G.

¹² *Id.* at 2.

¹³ Tr. at 31.

¹⁴ Tr. at 31-34, 45-55.

¹⁵ Tr. at 32, 47-48, 53-55, 63; GE 2, *Subject Interview*, November 8, 2010 (11/10 SI).

Applicant at first tried to resolve his mortgage debt by securing the services of a private firm that advertised its ability to modify mortgages. He spent about nine months and paid the firm \$3,500 to no avail. He then worked with the bank directly. He submitted multiple loan modification requests and offered the bank a deed in lieu of foreclosure, but the bank rejected these offers. He then attempted to short-sale the property. The second offer for \$165,000 was accepted by the bank and the house sold in March or April 2011.¹⁶ Applicant submitted documentary proof that his mortgage obligation, the debts alleged in SOR ¶¶ 2.e and 2.g, has been satisfied.¹⁷

Applicant has resolved or initiated a good-faith effort to satisfy his other debts. He secured the services of a debt settlement firm (DSF) in October 2010.¹⁸ With the DSF's assistance, Applicant has resolved four debts, including three that were listed in the SOR.¹⁹ Applicant submitted documentary proof that the debts alleged in SOR ¶¶ 2.a, 2.b, and 2.d were "settled in full" between January and March 2011.²⁰

Applicant has also negotiated a settlement of the credit card debt alleged in SOR ¶ 2.f. He has been making the monthly payments agreed to with the creditor for the last five months.²¹ With the assistance of the DSF, he has contacted the creditor for the debt alleged in ¶ 2.c and has made reasonable offers to settle the debt. He will finish paying the DSF's monthly service fee of \$231 at the end of this month and will apply these funds to satisfy the debt alleged in ¶ 2.c. He submitted documentary proof that the DSF has contacted this creditor and is attempting to settle the last remaining SOR debt.²²

In total, Applicant has satisfied five of the seven SOR debts or approximately \$312,000 of the debt alleged in the SOR. He satisfied or started paying six of the seven debts prior to the SOR being issued. The amount past due on the two remaining SOR debts is less than \$15,000. He has been consistently paying on one of these debts for several months and has made a good-faith effort to resolve the other debt.

¹⁶ Tr. at 33-36; GE 3.

¹⁷ AE K. See *also* Tr. at 18 and 125 (Government stipulates that Applicant satisfied his mortgage debt); GE 1 at 57-61 (applicant fully discloses mortgage debt on security clearance application); GE 4 at 41-187 and 217-235 (applicant's documented efforts to resolve mortgage debt).

¹⁸ GE 4 at 6-12.

¹⁹ AE L – O.

²⁰ AE Q. See *also* Tr. at 18 and 125 (Government stipulates that these three debts, for a combined total of \$14,033, were paid); GE 4 at 13-15 (¶ 2.b), 16-17 (¶ 2.d), 20-24 (¶ 2.a), 25-40 (chart with settlements and proof of payments).

²¹ AE J and AE Q (settlement agreement and proof of payments); Tr. at 41, 58-59. See *also* Tr. at 18 and 125 (Government stipulates that Applicant has been paying the debt alleged in SOR ¶ 2.f in accordance with settlement agreement).

²² Tr. at 41, 58-59; AE R (DSF promises to resolve debt alleged in SOR ¶ 2.c within 30-45 days).

Applicant continues to live a modest lifestyle. His current salary is \$73,000 per year. He has a part time job that brings in some extra money, which he uses to pay his debts. He sold his car, because he no longer needs it to get to work, and used the sale proceeds to pay his debts. He also used his tax refund from last year to satisfy some of his past-due debts. He manages his finances closely and has about \$500 in disposable income each month to address any contingencies that might arise, including his wife's on-going medical bills. He does not have any credit cards and has not accumulated any other debt.²³

Foreign Influence

Applicant met his wife in 2003 through an internet dating website. She was born, educated, and lived most of her life until recently in Russia. She was a highly successful professional working in the banking industry in Russia before immigrating to the U.S. After a lengthy long-distance relationship, she married Applicant in 2008. Applicant visited his future wife in Russia before and after they married. He made certain to report his foreign travel to his previous employer's security office. Even though his current employer does not have such a reporting requirement, he continued this practice at his current job.²⁴ He fully disclosed his foreign travel and contacts on his security clearance application and subsequent background interviews.²⁵ He continues to adhere to the Navy saying that "loose lips, sinks ships."²⁶

Applicant's wife returned to Russia after they got married in 2008. In light of Applicant's financial situation, they could not afford to lose her salary from her well-paying job in Russia. She helped him financially to pay his past-due debts, sending him approximately \$30,000.²⁷

Applicant's daughter was born in 2009 in Russia. She became a dual citizen of Russia and the U.S. Applicant's wife and his daughter immigrated to the U.S. in May 2010. Applicant's wife is a permanent resident of the U.S. She sold her property in Russia and is transferring the proceeds from the sale of the property, about \$300,000, to the U.S. She plans to use the money to purchase the family's home here in the U.S. Once the money is transferred to her bank account in the U.S., she will have no real or personal property left in Russia. The money is currently in a Russian bank account.²⁸

²³ Tr. at 42-45, 59-63; GE 2, 11/10 SI; GE 3; GE 4 at 245-252 (tax return). See also GE 4 at 185-186, 213-215, 221, and 233.

²⁴ Tr. at 64-67, 77-79, 82-83, 86-87, 106, 113; GE 2, 11/10 SI.

²⁵ GE 1 at 40-45, 48-53; GE 2.

²⁶ Tr. at 19.

²⁷ Tr. at 77-79, 95; GE 1 at 48; GE 2, 11/10 SI.

²⁸ Tr. at 79-82, 85, 96-98, 113-118.

Applicant's in-laws are residents and citizens of Russia. They are both retired and receive a pension from the Russian government. His mother-in-law is bedridden, after suffering a stroke. His father-in-law used to work for the Russian government. His in-laws currently reside in a town that is connected to the Russian military and requires special permission from the Russian government to enter. Applicant was denied permission to enter this town when he was dating his wife because he was a foreigner. Applicant's wife submitted an application to visit her parents after her mother had a stroke. She was denied permission to enter the town, where she had been born and raised, because she had married Applicant, a U.S. citizen. Applicant's wife was aware that the Russian government might deny her permission to visit her parents if she married Applicant, and had discussed this possibility with Applicant prior to their marriage. They do not provide financial support to her parents. Her father did provide them about \$13,000 to start a college fund for their daughter. Applicant's wife speaks with her parents on a weekly basis.²⁹

Applicant's wife has two close friends who are residents and citizens of Russia. One is her best friend who helped her pick her child's name. The other, was the bridesmaid at her wedding. She has visited extensively with both of these friends when she has traveled to Russia and when she lived in Russia. She continues to speak to them on a regular basis.³⁰

Applicant's wife has a sister and three cousins who are also residents and citizens of Russia. She has not spoken to her sister in over four years and rarely speaks to her cousins.³¹

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.³² 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."³³ The judiciary is often manipulated by the authorities and the Russian government continues to infringe upon its citizen's rights.³⁴ Another area of vital concern is Russia's intelligence gathering history targeting the United States, which remains active and strong.³⁵

²⁹ Tr. at 67-77, 106-111, 119, 131-132; GE 2, 11/10 SI.

³⁰ Tr. at 87-89; GE 1 at 42-44.

³¹ Tr. at 72, 87, 89-93, 111-113, 118; GE 1.

³² GE IX.

³³ GE IX at 7. *See also* GE X; Tr. at 84-85.

³⁴ GE IX and X.

³⁵ *See generally* GE I – GE VIII.

Applicant's wife does not intend to return to Russia. She wants to build a life in the United States with Applicant and their daughter.³⁶ When asked at hearing whether he had ever considered moving to Russia during the deepest hours of his financial trouble, Applicant responded as follows:

Well sir, to be honest with you, I was born in Germany to military parents, and . . . I remember when I landed in the United States at that particular point, I kissed the ground . . . I could never give up what we have in the United States. . . I've been probably as patriotic as anybody could ever be as far as, you know, how I feel about the United States of America. . . I can tell you one thing . . . I have no desire whatsoever to go to Russia and work, or live, or anything like that.³⁷

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

³⁶ Tr. at 93-95, 120-122, 132; GE 1 at 42-44.

³⁷ Tr. at 98-100.

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 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 F, Financial Considerations

The security concern relating to financial problems is articulated at AG ¶ 18, as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information Applicant's past indebtedness raises this concern and establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

However, an applicant's past or current indebtedness is not the end of the analysis, because “[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness.”³⁸ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. I have considered all the mitigating conditions, and find that the following were established by the evidence:

³⁸ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problem was due to matters beyond his control. His business failed as a direct result of the general economic downturn. He was then forced to take a job in another state that exacerbated his financial situation.³⁹ He could not sell his house because it had lost half its value due to the housing market collapse. He turned to credit cards to pay his bills, including his mortgage. When faced with daunting financial debt, Applicant did not simply walk away from his financial obligations or use the businesses failure as an excuse not to pay his debts. Instead, he worked with his lender, sold his home, and thereby satisfied his mortgage obligation – the largest debt listed in the SOR. He was able to negotiate settlements in good-faith with the vast majority of his other overdue creditors. He has reduced his debt from over \$300,000 to roughly \$15,000. He is paying one of his two remaining overdue creditors, and provided documentary proof that he has made good-faith efforts to resolve the other past-due debt.⁴⁰ Although he has not taken a financial counseling course, Applicant's actions demonstrate that his financial situation is under control. He sold his car and used the sale proceeds, as well as his tax refund, to repay his debts. He does not have credit cards and lives modestly. His recent financial problem was a blimp in an otherwise long history of demonstrated financial prudence. AG ¶¶ 20(a) through 20(d) apply. Applicant mitigated the financial considerations concern.

³⁹ *Contrast with* ISCR Case No. 09-08108 (App. Bd. Feb. 15, 2011) (applicant's voluntary decision to change jobs that paid less money was not a matter beyond his control.).

⁴⁰ *Contrast with* ISCR Case No. 10-01978 (App. Bd. Aug. 24, 2011) (after getting into financial trouble, applicant simply walked away from his financial obligations). See *also* ISCR Case No. 10-09511 (Nov. 17, 2011) (adverse decision upheld because applicant failed to demonstrate that he acted in a responsible fashion in resolving significant debt that was, in part, due to business downturn).

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 addressing the foreign influence concern, the Appeal Board has repeatedly held that “the foreign government involved, the intelligence gathering history of that government, and the presence of terrorist activity” in that country, as well as “[t]he country’s human rights record,” are all key factors an Administrative Judge must consider.⁴¹ An applicant’s familial ties to a foreign country can raise the foreign influence concern, including ties based upon an applicant’s in-laws.⁴² At the same time, there is no *per se* rule against applicants with familial ties to a foreign country, even hostile countries. Instead, an applicant with familial ties to a hostile country, such as Russia, bears a “very heavy burden” in mitigating the foreign influence concern raised by their familial ties.⁴³

Applicant’s strong ties to Russia, through his spouse’s parents and friends, coupled with the Russian government’s human rights record and its intelligence

⁴¹ ISCR Case No. 09-06831 at 4 (App. Bd. Mar. 8, 2011) (favorable decision reversed, in part, because the judge failed to consider the nature of the Russian government and its intelligence gathering activities against the U.S.).

⁴² *Id.* (“Applicant’s in-laws are citizens and residents of Russia. In-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.”). See *also* ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011) (“There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.”).

⁴³ 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.”). See *also* ISCR Case No. 10-09986 at 3 (“an applicant with family members in a country that is hostile to the U.S. bears a “very heavy burden” to show that the family members are not a means of coercion or exploitation.”); ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (reaffirming “very heavy burden” standard under current guidelines).

gathering history against the U.S. raises the above concern.⁴⁴ 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;
- (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; and
- (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.

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

Applicant failed to mitigate the foreign influence concern. His in-laws still reside in Russia and both receive a pension from the government. They reside in a town that is inaccessible to the outside world without special permission from the Russian government. Applicant's in-laws are especially vulnerable to the whims of the Russian government. In light of the nature of the country at issue and his wife's close relationship with her parents, AG ¶ 8(a) does not apply.

Applicant's deep, longstanding relationship and loyalties to the U.S. are self-evident. He served this nation during the height of the Cold War and has had access to

⁴⁴ The wife's three cousins do not raise a security concern under Guideline B and, thus, SOR ¶ 1.c is decided in Applicant's favor.

classified information for years without incident. He has fully disclosed his foreign travel and connections throughout the security clearance process. He even reported his foreign travel to his current employer when there was no such requirement. His wife demonstrated her commitment to Applicant and their new life together when she married him knowing that it would likely preclude her from visiting her parents. However, I cannot overlook the fact that Applicant's spouse just recently immigrated to the U.S., her parents and closest friends remain in Russia, and her life savings, some \$300,000, are currently in a Russian bank account.⁴⁵ In weighing this evidence and resolving the issue of whether Applicant met his burden in demonstrating that he can be expected to resolve a conflict of interest in favor of the U.S., I am required to resolve *any* doubt raised by Applicant's significant connections to Russia in favor of national security.⁴⁶ AG ¶ 8(b) does not apply. Applicant's strong 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).⁴⁷ 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.⁴⁸

⁴⁵ This foreign financial interest was not alleged as a concern. However, as Applicant was on notice that his ties to Russia, through his spouse, were at issue, I will consider this information in assessing the mitigation evidence and whole-person factors. ISCR Case No. 09-06770 (App. Bd. Nov. 8, 2002); ISCR Case No. 01-07656 (App. Bd. Aug. 29, 2002). See also ISCR Case No. 10-00922 at 3 (App. Bd. Nov. 3, 2011) ("It is appropriate for a Judge to consider conduct and matters not alleged in the SOR for such limited purposes as evaluating a claim of extenuation, mitigation or changed circumstances, and when weighing relevant and material information under the whole person concept.").

⁴⁶ AG ¶ 2(b).

⁴⁷ (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.

⁴⁸ ISCR Case No. 01-26893 at 9-10 (emphasis added).

I have considered and given due weight to all the favorable and extenuating factors in this case. Applicant has served this nation, both in the military and as a government contractor, for over twelve years combined. He has had access to classified information and has never mishandled or otherwise compromised such information. He faced financial ruin due to the current economic downturn. Instead of moving to Russia with his wife and leaving his financial trouble behind, he stayed and resolved his financial problem in a responsible manner. However, this favorable evidence, as well as the other mitigating record evidence, does not outweigh the foreign influence concern.

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.⁴⁹ Accordingly, in light of the security risk posed by Applicant's strong ties to Russia, through his wife's parents and her close friends, I resolve the concern raised by this situation against Applicant.

Formal Findings

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

| | |
|--|-------------------|
| Paragraph 1, Guideline B (Foreign Influence): | AGAINST APPLICANT |
| Subparagraphs 1.a and 1.b: | Against Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | Against Applicant |
| Paragraph 2, Guideline F (Financial Considerations): | FOR APPLICANT |
| Subparagraphs 2.a – 2.g: | For 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.

Francisco Mendez
Administrative Judge

⁴⁹ ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).