DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-04980
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

06/06/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,[1] I grant Applicant's clearance.

On 6 January 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence.[2] Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 21 February 2012, and I convened a hearing 15 March 2012. DOHA received the transcript 26 March 2012.

[1]Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, hearing exhibits (HE) I-II, and Applicant exhibit A.

[2]DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) 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 1 September 2006.

Findings of Fact

Applicant admitted the allegations of the SOR. He is a 50-year-old construction superintendent employed by a defense contractor since August 2010. He has not previously held an industrial clearance. He held a clearance while in the U.S. military 1983-1989, and has had non-DoD clearances in most of his jobs since leaving the military, to include working on nuclear power plants.

Applicant was born and raised in the U.S. Both his parents are native-born U.S. citizens, although his father is now deceased. Applicant has three brothers and a sister, all native-born U.S. citizens. He served on active duty in the U.S. military from February 1983 to August 1989.

He married his first wife, a native-born U.S. citizen, in July 1984. They had three children together before divorcing in September 1996: two sons born in October 1985 and April 1987, and a daughter born in January 1989. All are native-born U.S. citizens, although his daughter was born in Germany while Applicant was stationed there during his military service. Their first-born son died three years ago in an automobile accident.

Applicant married his second wife in July 2008. She is 18 years Applicant's junior, and immigrated to the U.S. from Belarus in 2000, when she was granted political asylum in the U.S. She also works in the construction industry. Indeed, they met in about 2004, when they both worked for the same construction company. She has applied for U.S. citizenship and is awaiting her citizenship interview (AE B). They have no children together, and are unlikely to have children because of medical issues.

Applicant's wife is a citizen of Belarus, but a legal permanent resident (LPR) of the U.S. His parents-in-law are resident citizens of Belarus. They are both retired engineers. They speak no English; Applicant speaks no Belarusian. He has contact with them once or twice per year, through his wife. He met them once, in August 2008, when he and his new wife traveled to Belarus to meet her family. His wife speaks to her mother by phone weekly.

Applicant's wife has one sister, who is married to a retired Russian army general. They are resident citizens of Russia, as is their daughter. Applicant's sister-in-law is a nurse; his brother-in-law was an engineer in the Russian army. Their daughter is in grade school. Applicant has contact with them once or twice per year, through his wife. Applicant visited them in Belarus for ten days in August 2008. Applicant's brother-in-law and sister-in-law speak no English; Applicant speaks no Russian. Applicant's sister-in-law and her daughter stayed with Applicant and his wife for two weeks in July 2010. Applicant's wife speaks to her sister about twice per month.

Applicant reported his foreign relatives as required on his clearance application (GE 1). He discussed his contacts with his foreign relations extensively during subject interviews in November 2010 (GE 2).

Belarus purports to be a democratic republic, but is in fact an autocratic regime ruled by its president, who has systematically undermined its democratic institutions and concentrated power in the executive branch of government by flawed referenda, manipulated elections, and arbitrary decrees. A former Soviet Republic, Belarus declared its sovereignty in July 1990 and its independence from the Soviet Union in August 1991. However, Belarus maintains close historical and cultural ties with Russia. The U.S. recognized Belarus as an independent state in December 1991. Belarusian authorities have severely restricted the constitutional rights of its citizens. There have been sweeping violations of human rights during elections, including disregard for freedom of assembly, association, and expression. Elections have been conducted in a climate of insecurity, fear, and problematic vote counts. Belarus exports significant quantities of defense materials, dual-use items, weapons, and weapons-related technology to countries of concern to the U.S., including state sponsors of terrorism. It has attempted to expand relations to countries of concern, including Iran, Sudan, and Syria. Naturalized U.S. citizens from Belarus do not automatically lose Belarusian citizenship. No evidence was presented that Belarus collects economic or military intelligence.

Russia—also a former Soviet Republic—is a nominal democracy with a mixed human rights record. It has been the target of terrorist activity in recent years. Russian federal forces pursuing terrorists act with impunity while engaging in torture, summary executions, disappearances, and arbitrary detentions. Additional problems include corruption, media suppression, life-threatening prison conditions, and corruption in law enforcement.

Russia imposes rigid visa requirements on foreign travelers entering, and traveling within, Russia. U.S. citizens who have at one time held Russian citizenship may be required to renounce Russian citizenship before applying for a Russian visa in their U.S. passport. Unless a Russian citizen has formally renounced his or her Russian citizenship, he or she risks being considered a Russian citizen and not allowed to depart except on a Russian passport.

Unlike Belarus, Russia has an active, significant, recent, and ongoing collection program focusing on the U.S. As of 2005, Russia was one of the two most aggressive collectors of sensitive and protected U.S. technology and accounted for much of such targeting. Much of Russia's targeting occurs through direct visits to U.S. facilities. However, the record does not indicate if Russia targets U.S. citizens through family members residing in Russia to obtain protected information. Furthermore, the U.S. and Russia cooperate over a broad spectrum of foreign-policy issues, particularly counter-terrorism efforts.

Applicant does not discuss the specifics of his work with his wife. He has not told any of his foreign relatives the specifics of his work, nor has he told them that he is applying for a clearance or that he has had other sensitive access in the past. The Government investigator who interviewed Applicant in November 2010 (GE 2)

concluded that "[q]uestioning did not disclose any indications of foreign influence or preference."

Applicant's work references (AE A) consider him extremely honest and trustworthy. He had unaccompanied access at his previous project site (a sensitive non-DoD facility) for the last five years without incident or concern.

Applicant and his wife own their home in the U.S., as well as three other houses. He estimates the value of the four houses at $900,000, and his net worth at over $1,000,000. Their combined annual income is about $175,000 (GE 3). They have no financial interests in Belarus or Russia, and provide no financial support to her relatives in Belarus and Russia.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.[3]

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group,

[3]*See*, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.[4] Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.[5] Further, security concerns may arise through 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.[6] In addition, security concerns may be raised by 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.[7] Finally, failure to report, where required, association with a foreign national may raise security concerns.[8]

In this case, the Government established a case for disqualification under Guideline B regarding Applicant's Russian relatives, but not regarding his Belarusian relatives. And in both cases, Applicant has mitigated the security concerns, both regarding Guideline B disqualifying and mitigating conditions as well as the whole-person factors.

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 persons spouse.[9] However, common sense and human sense equally suggest that these imputed or derivative ties are both not as strong as, and are more easily rebutted than, direct ties. Thus, while this case rests on an assessment of Applicant's direct contacts with his foreign relatives as well as his wife's contacts with

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[4]AG ¶ 6.

[5]AG ¶ 7 (a).

[6]AG ¶ 7 (c).

[7]AG ¶ 7 (e).

[8]AG ¶ 7 (f).

[9]*See,* ISCR Case No. 05-00939 (App. Bd. 3 October 2007).

her foreign relatives, the most important focus is necessarily Applicant's relationship with his foreign relatives.

Considering Applicant first, he was born in the U.S. and has lived in the U.S. all his life except for an overseas military tour over 20 years ago. All his immediate family by birth are native-born, resident citizens of the U.S. His immediate family members by his first marriage, including his two surviving children are native-born, resident citizens of the U.S. Applicant has no financial assets in any foreign country, and a net worth in the U.S. of over $1,000,000. He has held security clearances or other unrestricted physical access based on trustworthiness determinations more or less continuously since 1983 without incident. This includes the 12 years he was married to his first wife, the 12 years he was single after his divorce, and the eight years of contact with his current wife, to whom he has been married since 2008.

Applicant's direct contacts with his foreign relatives are either non-existent or infrequent. Given the language barrier between Applicant and his foreign relatives it is virtually non-existent. He has met all four on only one 2008 visit, occasioned by his marriage. He had a second visit with his sister-in-law on her 2010 visit to the U.S. Otherwise, he has twice-yearly telephone contact with them, through his wife.

Considering Applicant's wife, she immigrated to the U.S. in 2000 on a grant of political asylum. She has been an LPR of the U.S. since then, and her application for U.S. citizenship is pending. Her direct physical contact with her foreign relatives appears to be the same as Applicant's: the wedding trip to Belarus in 2008 and her sister's return visit to the U.S. in 2010. Her direct contacts by telephone to her mother (weekly) and sister (bi-monthly) are more regular than Applicant's, and not limited by a language barrier, presumably more enlightening. However, there is no indication of regular travel to Russia or Belarus, no indication of more extensive contacts like exchanges of presents on holidays or special occasions, no evidence of more intimate contact beyond the telephone calls.

Considering the foreign relatives themselves, there is no evidence tying Applicant's parents-in-law to the Belarusian government or his sister-in-law to the Russian government. The brother-in-law, retired from the Russian military as a senior officer, obviously has some tie to the Russian government. However, that does not end the inquiry. Russia is not a monolith, and the brother-in-law was an engineer, now retired. There is no evidence that he was connected in any way to Russia's intelligence gathering apparatus.

Considering the foreign countries themselves, while Belarus has a poor human rights record, there is no evidence that it is involved in collecting economic or military intelligence, or beyond that, that it targets its ex-patriot citizens in any fashion to obtain such information. On the other hand, Russia and the U.S. enjoy competitive foreign relations, although they cooperate on a wide variety of issues. Nevertheless, while Russia is actively engaged in the collection of U.S. information, there is no evidence suggesting that it targets its expatriate citizens such that would make Applicant or his

family members likely targets for coercion, duress, or influence. In this case the putative chain of influence is even more attenuated, proceeding from the brother-in-law (Russian) through the sister-in-law (Russian) through Applicant's wife (Belarusian ex-patriot) to Applicant.

Examining Applicant's circumstances, his contacts with family in Belarus raise little heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant has resided in the U.S. all his life. His extensive financial interests are all in the U.S. His contacts with his foreign relatives is minimal at best. Further, Applicant is well aware of his reporting obligations should any of these foreign contacts attempt to obtain protected information, and he has a demonstrated history of reporting contacts. Belarus does not collect economic or military intelligence. Belarus does not target its ex-patriot citizens for such information. Applicant's parents-in-law do not appear to be in a position to be exploited through Applicant's wife, much less Applicant.

Even finding a potential case for disqualification under ¶¶ 7 (a) and (b) regarding Russia, I find the security concerns mitigated. Applicant and his wife have no direct connection to Russia. Applicant's wife left Belarus seeking political asylum in the U.S. Her family in Russia is not so situated as to be a likely source of pressure, and in any event Russia does not appear to utilize those tactics to collect sensitive information.[10] Her loyalty to the U.S. is clearly established and Applicant's loyalty to the U.S. is undisputed. Certainly, his relationships and loyalties in the U.S. are so long deep and longstanding, and his sense of loyalty or obligation to his foreign relatives so short and minimal (notwithstanding his second marriage), that he can be expected to resolve any conflict of interest in favor of U.S. interests. Consequently, there is no conflict of interest that can be exploited.[11] Finally, there is no reasonable characterization of his contacts with family in Russia as other than casual and infrequent.[12] His wife's contacts are not casual and infrequent, but neither are they so strong that Applicant would chose his imputed or derivative interests in Russia over U.S. interests. I conclude that it is unlikely he can be pressured based on his limited contacts with his family in Russia. Accordingly, I resolve Guideline B for Applicant.

Consideration of the nine "whole-person" factors requires the same result. Security clearance decisions are not rooted in risk aversion, but in risk management. Were this not the case, there would be no point to having the Directive or a right to due

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[10]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.;

[11]AG ¶ 8 (b) there is no conflict of interest, either because the individuals sense of obligation to the foreign group 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;

[12]AG ¶ 8 (c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

process before an impartial trier of fact. I would note first of all that Applicant is a U.S. citizen, born in this country of parents who themselves are U.S. citizens. He has four siblings, all of whom are U.S. born citizens as well. Therefore, Applicant is in a position different from many others under Guideline B in that he has not become a U.S. citizen only recently, nor has he faced a shifting of national loyalties that might be expected to accompany the naturalization process. Additionally, his children are U.S.-born citizens of his first wife and his second wife has been an LPR of this country since 2000. He and his wife hold substantial assets in the U.S. and none in Russia or Belarus. All in all his family history, his immediate family, and his financial holdings suggest greater psychological ties to the U.S. than might be found in many other cases under this Guideline. Certainly, they are overwhelmingly greater than his ties to Russia or Belarus, even factoring in his wife's relationship to her family there. I conclude that Applicant's security concerns can be mitigated as a matter of law merely through the application of relevant mitigating conditions. Belarus presents no heightened risk because it does not collect U.S. information and—its poor human rights record notwithstanding—maintains civil diplomatic relations with the U.S. Russia and the U.S. enjoy competitive foreign relations, and Russia is an active collector of U.S. information. However, it does not target its ex-patriot citizens to obtain such information and does not pursue foreign policies inherently inimical to U.S. interests, as perhaps do Iran or North Korea.

However, I am not limited to AG mitigating conditions when deciding whether an applicant has demonstrated extenuation or mitigation. I may conclude that no mitigating condition will *per se* justify the granting of a clearance yet nevertheless decide in an Applicant's favor in view of the whole-person analysis. *See, e.g.*, ISCR Case No. 02-05110 at n 7 (App. Bd. Mar. 22, 2004); ISCR Case No. 99-0542 at 7 (App. Bd. Mar. 21, 2003). Thus, even if I could not conclude as a matter of law that Applicant's security concerns were mitigated through the application of relevant mitigating conditions, I would still conclude as a whole (1) that Applicant has been a U.S. citizen since birth; (2) that his parents and siblings are themselves U.S. citizens by birth; (3) that his wife has been an LPR of the U.S for 12 years; (4) that Applicant's children are U.S. citizens by birth, and have no foreign citizenship; (5) that Applicant's financial assets, valued at over $1 million, are located in the U.S.; (6) that neither Applicant nor his wife own property in Russia or Belarus; (7) that Applicant has previously held a DoD security clearance or other trustworthiness-based access since 1983 without incident or concern; and (8) that Applicant's *direct* contact with his foreign in-laws is either non-existent or infrequent. After examining these facts in light of the record, I conclude that the real probability of Applicant becoming a danger to national security is sufficiently low to warrant a favorable decision.

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraphs a-e:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge