



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



In the matter of:)
)
) ISCR Case No. 11-08533
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

01/18/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by his relationship to his family members who live in Israel, but failed to mitigate the security concern generated by his relationship to his friends and in-laws who live in Russia. Clearance is denied.

Statement of the Case

On July 19, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD for SORs issued as of September 1, 2006.

Applicant answered the SOR on September 6, 2012, admitting all of the allegations, and requesting a decision on the record. On September 20, 2012,

Department Counsel requested a hearing before the Defense Office of Hearings and Appeals. (DOHA) I received the case assignment on October 16, 2012. That day, DOHA issued a notice of hearing scheduling the case for November 8, 2012. I held the hearing as scheduled. During the hearing, I received three Government exhibits, marked as Government Exhibit (GE) 1 through 3, one Applicant exhibit marked as Applicant Exhibits (AE) A, and Applicant's testimony. Also, I took administrative notice of the adjudicative facts set forth in 17 documents, marked as Hearing Exhibit (HE) I through XV, HE XVIII, and HE XXII. I declined to take administrative notice of the adjudicative facts set forth in HE XVI, HE XVII, and HE XVIII to XXI. DOHA received the hearing transcript (Tr.) on November 16, 2012.

Findings of Fact

Applicant is a 63-year-old married man with two adult children. Applicant and his current wife have been married since 1973. Applicant was born and raised in the former Soviet Union in a province that is now part of Russia. After finishing high school, he completed a five-year master's program, majoring in experimental nuclear physics. (Tr. 39) Currently, Applicant works for a defense contractor as a senior software developer. (AE A)

Shortly after earning his master's degree, Applicant entered the Russian Merchant Marines where he served for nine years as a reactor operator on an icebreaker, a nuclear submarine used to travel underwater in the Arctic Circle. (Tr. 49-50) Because the reactors used in icebreakers are the same as those used in military submarines, Applicant held a Top Secret clearance. (Tr. 49)

Applicant did not want to join the Russian Merchant Marines. However, as a person of Jewish ethnicity living in Russia, more desirable jobs were not available to him. (Tr. 55)

In approximately 1982, Applicant left the Russian Merchant Marines and joined the St. Petersburg Nuclear Physics Institute ("the Institute"). (Tr. 51) He worked there for approximately 12 years. In 1994, Applicant left the Institute and took a job with a private, Russian company that designs database software. (Tr. 52)

After the fall of the Soviet Union, Applicant became politically active. He worked on the campaign of the first democratically elected mayor of City X. By the mid-1990s, Applicant became disillusioned with Russia's sluggish pace of reform and pervasive anti-Semitism. (Tr. 52; GE 3 at 1) In 1996, Applicant and his family immigrated to the United States as part of a U.S. program designed to facilitate the immigration of Jewish people, a persecuted minority in Russia, to the United States. (Tr. 53) Applicant has not returned to Russia since becoming a naturalized U.S. citizen. (Tr. 78)

Applicant's parents and his sister emigrated from Russia to Israel in 1991. Applicant visited his parents in Israel in 1993 and travelled there again in 2000 to attend his father's funeral. (Tr. 43-45)

Shortly after Applicant's father died, his mother moved to the United States and obtained permanent legal resident status. She lived in the United States for approximately ten years, and Applicant supported her. As she became progressively disabled, Applicant found it increasingly difficult to support her. Applicant then discussed his mother's long-term care with his sister. Because Israel provides free assisted living care for its citizens, Applicant and his sister decided that their mother should return to Israel. (Tr. 43-45, 60-61)

Currently, Applicant's mother is 88 years old. She has severe dementia and is blind. Also, she is unable to speak. Consequently, Applicant is unable to communicate with her. Applicant last travelled to Israel in 2010 to help his mother relocate. (Tr. 61)

Applicant's sister is a homemaker and is of retirement age. It is unknown from the record whether she has ever worked outside of the home. Applicant talks to her approximately once per month to check on their mother. (Tr. 45, 64)

Applicant's mother-in-law is a citizen and resident of Russia. She is a retired bank clerk. (GE 2 at 9) She is 92 years old and in bad health. (Tr. 45) Applicant's sister-in-law, a retired factory worker, lives with her and cares for her. Applicant's wife keeps in touch with these relatives by phone approximately once per week. (Tr. 67). Applicant does not communicate with them.

Applicant has two friends who are Russian citizens and residents with whom he remains in contact. One of his friends is a physicist with a state nuclear physics institute. (Tr. 69) They met in college and worked together on the same icebreaker. Currently, they talk about once per year. Applicant has sent his friend money on three or four occasions to help him pay for medication.¹ (Tr. 46; AE 3 at 8) Applicant's other Russian friend is an astrophysicist. He teaches at a university and works for a "very famous institution in Russia." (Tr. 71) Applicant and this friend met approximately 40 years ago, and used to vacation together when Applicant lived in Russia. Currently, they talk about four times per year. (Tr. 72-73)

Administrative Notice

Russia's intelligence services are conducting a range of activities to collect economic information and technology from U.S. targets. (HE I at 1) Russian immigrants with advanced technical skills who work for leading U.S. companies may be increasingly targeted for recruitment by the Russian intelligence services. (HE I at 14) In June 2010, the U.S. Department of Justice arrested ten alleged Russian spies who had been carrying out long-term deep-cover assignments in the United States. (HE III) During the following month, all ten defendants pleaded guilty to conspiracy to act as an agent of a foreign government within the United States, and were immediately expelled. (HE IV) In January 2011, a former Central Intelligence Agency (CIA) employee was sentenced to

¹Applicant's friend has a debilitating disease, and he has trouble supporting himself. (Tr. 46-47)

eight years imprisonment after pleading guilty to conspiracy to act as an agent of a foreign government and conspiracy to commit international money laundering. Specifically, between 2006 and 2008, the former CIA employee passed information to Russia in exchange for money. (HE V)

Although Russia has made some progress in respecting human rights since the breakup of the Soviet Union, significant problems remain. (HE IX at 7) For example, several human rights activists and journalists have been killed under mysterious circumstances in recent years. (HE IX at 2) Although Russian law provides for an independent judiciary, judges remain subject to influence from the executive branch, the military, and other security forces. (HE IX at 9) Russian law requires telephone and cellular companies to grant its Ministry of Internal Affairs and Federal Security Service 24-hour remote access to their client databases. (HE IX at 12) Also, these agencies require Internet companies to provide dedicated lines to enable tracking of private e-mail communications. (*Id.*)

Israel is a parliamentary democracy with a modern economy. U.S.-Israel defense, diplomatic, and economic cooperation has been close for decades. (HE XV at 5) U.S. citizens travelling to Israel of Arab, Middle Eastern, or Muslim origin; those involved in missionary or activist activity; or those requesting that Israeli stamps not be entered into their passport may face prolonged questioning from Israeli authorities upon entry or departure. (HE XI at 3) Some travellers have had their audio-visual or data storage/processing equipment confiscated at Ben Gurion Airport in Israel. While most items are returned before the traveller's departure, some items have reportedly been damaged or destroyed. (HE XI at 3)

Several groups operating in Israel, the West Bank, and Gaza have been designated by the U.S. State Department as foreign terrorist organizations. (HE XI at 6) There is an ongoing threat throughout Israel of terrorist attacks, kidnappings, and rocket attacks. (HE XII)

In 1986, Jonathan Pollard, a civilian U.S. naval intelligence employee and his wife pleaded guilty to selling classified documents to Israel. Four Israeli officials were indicted in connection with the case. (HE XV at 42) In 2006, a DoD analyst pleaded guilty to disclosing classified information to an Israeli diplomat and to two pro-Israel lobbyists. (HE XV at 42) In 2009, an employee of the U.S. Army Armament, Research, Development, and Engineering Center was indicted on suspicion of giving Israel classified documents between 1979 and 1985. (HE XV at 42)

Foreign countries, including Israel, aggressively target and acquire sensitive and protected U.S. technologies. (HE XIII at 11) Foreign governments are most likely not directly involved in tasking the collectors of protected U.S. technologies. Instead, profits, patriotism to their home countries, and the desire to achieve academic or scientific acclaim appear to be the motivators. (HE XIII at 12)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, "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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest" (AG ¶ 6). Moreover, "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" (*Id.*).

Russia has an active, ongoing espionage program that targets the United States. Also, Russia retains some characteristics of a police state, with an executive branch that has the power to monitor private, electronic communications; control the judicial branch of the government; and intimidate the press. Consequently, Applicant's relationship with his family and friends living in Russia triggers the application of 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.”

The following mitigating conditions under AG ¶ 8 are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions and 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.;

(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; 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 fact that Applicant does not talk with his sister-in-law and his mother-in-law does not overcome the rebuttable presumption that “a person has ties of affection for, or obligation to, the immediate family members of a person’s spouse.” (ISCR Case No. 07-17673 at 2 (April 2, 2009)) Applicant’s wife keeps in touch regularly with these relatives. Consequently, AG ¶ 8(c) does not apply.

Applicant’s contact with his Russian friends is casual and infrequent. However, in light of their prominent careers, I cannot conclude that there is little likelihood that these relationships could create a risk of foreign influence or exploitation. AG ¶ 8(c) does not apply to the relationship between Applicant and his Russian friends.

While living in Russia, Applicant’s life was adversely impacted by anti-Semitism. This was one of the primary reasons he left the country. Under these circumstances, I conclude that he has no sense of loyalty to Russia. However, the prominent positions of Applicant’s friends living in Russia, together with Russia’s role as one of the most significant conductors of espionage against the United States, and its continued disregard for human rights, generates a heavy burden that Applicant has not overcome. AG ¶¶ 8(a) and 8(b) do not apply. Applicant has not mitigated the security risk generated by his friends and relatives who are Russian citizens.

Israel aggressively targets protected or sensitive U.S. technologies. Also, over the past 25 years, several people have been caught spying against the United States on Israel’s behalf. 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.”

Profits, patriotism to their home countries, and the desire to achieve academic or scientific acclaim appear to be the motivators for individuals who target sensitive or protected information of the United States. Applicant, however, has never lived in Israel, and has visited Israel only three times. Consequently, the potential that patriotism towards Israel is a security risk is nonexistent in this case.

There have been episodes of espionage conducted on Israel’s behalf against U.S. interests. Although this limits the probative value of Israel’s friendly relationship and its shared values with the United States, it does not nullify it. Unlike Russia, Israel has no history of brute oppression or intimidation of its citizens. Also unlike Russia, there is no record evidence that Israel’s executive branch, military, or security services have the type of influence over the other branches of government that would enable or compel them to subject Applicant to coercion by threatening the well-being of his mother or his sister. Under these circumstances, I conclude that AG ¶¶ 8(a) and 8(b) apply.

Whole-Person Concept

Under the whole-person concept, 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.

Applicant overcame prejudice in Russia and moved to the United States where he has cultivated a successful career. These factors do not mitigate the vulnerability to coercion generated by his family and friends living in Russia. Upon considering this case in the context of the whole-person concept, I conclude that Applicant has not mitigated the security concern.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant

Subparagraphs 1.c-1.f:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge