



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-08802

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

08/30/2013

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to mitigate foreign influence security concerns. Applicant's spouse has strong connections to Russia. She is a citizen of Russia, traveled to Russia with her children in the last three years, and her mother is a citizen and resident of Russia. She communicates frequently with her mother. Russia aggressively seeks classified and sensitive information from the United States and might use Applicant's spouse and mother-in-law to put pressure on Applicant in an attempt to compromise classified or sensitive information. Clearance is denied.

Statement of the Case

On September 2, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). The Defense Office of Hearings and Appeals (DOHA) issued an undated statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline B (foreign influence). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or deny a security clearance for him, and recommended referral to an administrative judge to determine whether his clearance should be granted or denied.

On May 28, 2013, Applicant provided a response to the SOR allegations, and elected to have his case decided at a hearing. On July 8, 2013, Department Counsel indicated he was ready to proceed. On July 15, 2013, the case was assigned to me. On July 29, 2013, DOHA issued a notice of hearing scheduling Applicant's hearing for August 1, 2013. (HE 1) The scheduling of the hearing was to avoid a conflict with Applicant's busy travel schedule. (HE 4) Applicant's hearing was held as scheduled using video teleconference. I admitted GE 1 and 2 and Applicant's Exhibits (AE) A to K without objection (Transcript (Tr.) 30-40). I received the transcript on August 9, 2013. Applicant's written opening statement and closing argument were attached to the record. (HE 5, 6) After the hearing, I received three exhibits, which were admitted without objection. (AE L-N)

Administrative Notice

Department Counsel requested, and I approved administrative notice of facts related to the Russian Federation (Russia) as outlined in the Russia section of this decision. (Tr. 38-40; See note 5, *infra*) In support of the requested administrative notice of facts concerning Russia, Department Counsel provided citations to supporting documents, which show detail and context for those facts. (Ex. I to X—listed in Request for Administrative Notice at 4-5) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant did not object to me taking administrative notice.

Findings of Fact¹

As to the SOR's factual allegations, Applicant admitted all of the allegations in his response to the SOR. He also provided mitigating information. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 43-year-old technician for a major defense contractor. (Tr. 7, 59; GE 1) In 1997, he earned a bachelor's of science degree in electronic engineering technology. (Tr. 7-8, 60) From 1988 to 1992 and from 1998 to 2000, he served on active

¹ The facts in this decision do not specifically describe employment or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

duty in the Army. (Tr. 59-60, 73) He left active duty as a specialist (E-4). (Tr. 74) His military occupational specialty was wire system installer (31L). (Tr. 74) After receipt of a medical discharge in 2000, he worked for the Defense Department as a contractor in the United States from 2000 to 2003. (Tr. 60) From 2003 to 2012, he worked overseas for Defense contractors. (Tr. 60-61, 75-76) He has not previously held a security clearance. (Tr. 8) His annual income is about \$55,000. (Tr. 89) He does not own any property in Russia. (Tr. 89)

In 2003, he met his future wife in the country where he was serving overseas. (Tr. 76) His spouse was born in 1978. (Tr. 82) She worked in a club overseas. (Tr. 77) In 2004, Applicant married, and their children were born overseas in 2005 and 2007. (Tr. 61-62) He and his family have lived in the United States for 18 months. (Tr. 61) His spouse is a Russian citizen. (Tr. 91; SOR ¶ 1.a) She has a U.S. Permanent Resident Card or "green card" and intends to become a U.S. citizen, when eligible, in about two years. (Tr. 62) She hopes to get her U.S. driver's license and begin training to be a chef in the near future. (Tr. 90) His spouse is not employed outside their home. (Tr. 62) His spouse has never worked for the Russian government. (Tr. 67) They recently purchased a home in the United States. (Tr. 63) Applicant's mother has moved in with Applicant and his family. (Tr. 63) Applicant disclosed his marriage and travel to Russia to his security manager as well as his mother-in-law's visits from Russia. (SOR response)

Applicant's father-in-law died in 2006. (Tr. 67; SOR response) His mother-in-law is a Russian citizen who lives in Russia. (Tr. 67, 88; SOR ¶ 1.b; SOR response) She lives off of her pension and teaches on a part-time basis. (Tr. 82, 98-99) She does not require financial assistance from Applicant or his spouse. (Tr. 67) Applicant has purchased plane tickets for his mother-in-law to visit Applicant's family at the overseas location. (Tr. 67-68, 81) His mother-in-law has never worked for the Russian government. (Tr. 68) Applicant's spouse communicates with her mother about once every 7 to 14 days. (Tr. 81) Applicant's communications with his mother-in-law are very brief and casual. (SOR response)

Applicant's sister-in-law is married to an Army lieutenant colonel, and they are living overseas, but not in Russia. (Tr. 68, 82-83, 85; SOR ¶ 1.c; AE A) Applicant's sister-in-law's husband has a top secret security clearance. (Tr. 68, 85) His sister-in-law has a U.S. green card. (Tr. 68, 92) Applicant's spouse communicates with her sister about every 7 to 14 days. (Tr. 86)

Applicant's spouse's brother, aunts, cousin, and uncles are citizens and residents of Russia. (Tr. 69, 87-88; SOR ¶¶ 1.c, 1.d; SOR response) Applicant and his spouse infrequently communicate with them usually on holidays or special occasions. (Tr. 69, 87-88; SOR response) Her brother may or may not be in the Russian army. (Tr. 83-84)² Applicant met his brother-in-law on one occasion; however, he does not speak English, and Applicant does not speak Russian. (Tr. 84) Applicant and his spouse's contact with

² Applicant's response to interrogatories indicates his brother-in-law is in the Russian army; however, at the hearing Applicant said this may be incorrect. (Tr. 97) On the other hand, he may be an officer in the Russian army because of his education. (Tr. 98)

a Russian embassy employee while living overseas was on only about five occasions and has not recurred since 2007. (Tr. 70-71, 96; SOR ¶ 1.e) The embassy employee probably worked in the Visa section. (Tr. 79)

In July 2006, Applicant traveled to Russia, and he stayed in Russia for about one week. (Tr. 78, 99-100; Office of Personnel Management (OPM) Personal Subject Interview (PSI) at 2, GE 2) His spouse and children most recently traveled to Russia about three years ago. (Tr. 79, 81)

Applicant's father served in the U.S. Army for 20 years. (Tr. 71) Applicant promised not to do anything that would jeopardize the security of the United States. (Tr. 72) Applicant's brother lives in the United States, and he is married with three children. (Tr. 95). His brother's wife and children are U.S. citizens. (Tr. 96)

Recommendations and Work Performance

Several of Applicant's colleagues and supervisors and Applicant's brother-in-law, who is an Army lieutenant colonel, have known Applicant professionally and socially for varying periods of time from a few months to more than thirteen years.³ They describe Applicant as a top-notch professional, who is ethical, conscientious, diligent, professional, trustworthy, reliable, honest, and loyal. They do not believe Applicant would compromise national security because of pressure that Russia would place on his in-laws in Russia, and they support approval of Applicant's security clearance. Applicant does not require a security clearance to continue with his day-to-day duties; however, his value to the contractor and his prospects for promotion would increase if he had a clearance. (Tr. 20)

Applicant received one Army Service Ribbon, one Army Commendation Medal, one Overseas Ribbon, and one National Defense Service Medal while serving on active duty. (AE L, M) He also completed several Army training courses. (AE L, M) At his hearing, he said he received an Army Good Conduct Medal. (Tr. 94) After his hearing, he clarified that he was not awarded an Army Good Conduct Medal. (AE N)⁴

³ The facts in his paragraph are based on the statements of three character witnesses and eleven letters. (Tr. 16-18, 45-57; AE A, B, C, D, E, F, G, H, I, J, K)

⁴ No adverse inference is drawn from Applicant's mistaken claim that he received a Good Conduct Medal, his omissions on his September 2, 2011 SF 86 (GE 1), or his two driving under the influence of alcohol offenses, as described in his February 21, 2012 Office of Personnel Management (OPM) personal subject interview (PSI). Those allegations were not listed on the SOR.

Russian Federation⁵

Russia is a vast and diverse federation with a total population around 143 million. Russia achieved independence with the dissolution of the Soviet Union in August 1991. Russia inherited the Soviet Union's permanent seat on the United Nations Security Council, most of its military assets, and the bulk of its foreign assets and its debts. Russia retained a powerful military and remains a nuclear superpower. Russian political power is concentrated in the executive branch, primarily in the president and prime minister. Its weak multiparty political system is dominated by the pro-government United Russia party and a bicameral legislature consisting of the State Duma (lower house) and Federation Council (upper house).

Russia has an uneven human rights record. The December 2011 parliamentary elections were criticized by international observers for government interference, manipulation, and electoral irregularities. In March 2012, President Putin was selected to a third term, after already serving the constitutional maximum of two consecutive terms. Russia has a recent history of political prosecution of individuals who threatened powerful state or business interests. While there was free expression on the Internet and in some print and electronic media, self-censorship and the government's ownership of and pressure on some outlets limited public discourse.

Russian law forbids entry to private residences except in cases prescribed by federal law. Government monitoring of correspondence, telephone conversations, or other means of communication without a warrant and collection, storage, utilization, and dissemination of information about a person's private life without consent are also prohibited. Russia suffers from a weak judiciary, widespread corruption, physical abuse, violence against women and children, unauthorized electronic surveillance and entry of private residences, and restrictions on right to free assembly.

U.S. citizens traveling in Russia may be subject to indiscriminate acts of terror in Russia. Terrorist activity in Russia includes suicide bombings, hostage taking, especially in connection with the Chechen conflict. Russian human rights abuses in the Chechen conflict include torture, summary executions, use of indiscriminate force and arbitrary detentions. In addition to problematic behavior in the Chechen conflict, Russian authorities engage in arbitrary arrest and detention as well as torture and abuse to obtain confessions. There is widespread government corruption, prison conditions are extremely harsh, and endemic crime are significant Russian problems. The Russian legislature has passed a series of reforms in Russian criminal procedural laws, making their law more consistent with Western standards. Russian human rights performance has improved in some areas.

Russia inherited a significant intelligence capability from the former Soviet Union, and continues to focus, with increasing sophistication, on collecting sensitive and

⁵ In addition to the materials cited in Department Counsel's request for administrative notice, some facts discussing positive aspects of the relationship between Russia and the United States are from the Department of State, *Background Notes Russia* (April 30, 2009), available at <http://www.state.gov/outofdate/bgn/russia/143281.htm> (Tr. 38-40).

protected U.S. technologies through its intelligence services. Russia has an active, ongoing collection program targeting sensitive U.S. industrial and military technology as well as commercial and dual-use technology. Russia also targets national security and environmental researchers as well as signal intelligence. Russia provides technology to other countries that has the potential to be used in the construction of weapons of mass destruction, biotechnology and missiles. Along with the People's Republic of China, Russia is one of the most aggressive collectors of U.S. economic information and technology, using human intelligence, cyber, and other operations.

In June 2010, ten Russian Intelligence Service secret agents were arrested for carrying out deep-cover assignments for Russia in the United States. In July 2010, all ten pleaded guilty to conspiracy to act as an agent of a foreign government, and they were expelled from the United States. In January 2011, a convicted spy and former U.S. Central Intelligence Agency employee was sentenced to an additional 96 months in prison after pleading guilty to conspiracy to act as an agent of a foreign government and conspiracy to commit international money laundering. He passed information to the Russian government in exchange for money between 2006 and 2008.⁶

The U.S. Office of the National Counterintelligence Executive reports a possible increase in Russian collection over the next several years because of the many Russian immigrants with advanced technical skills working for leading U.S. companies who may be targeted for recruitment by Russian intelligence services. Also, Russia's increasing economic integration with the West is seen as likely to lead to a great number of Russian companies affiliated with the intelligence services, often through employing ostensibly retired intelligence officers, doing business with the United States. Beyond collection activities and espionage directed at the United States, Russia has provided various military and missile technologies to other countries of security concern, including China, Iran, Syria, and Venezuela.

Russia and the United States are occasionally aligned on political initiatives and have joined in numerous international agreements, including efforts to resolve international political problems at the United Nations. For example, the United States and Russia entered into a bilateral World Trade Organization accession agreement in 2006. Russia imports U.S. goods valued at several billion dollars. Russia and United States are allies in the war on terrorism, and both seek to suppress the proliferation of weapons of mass destruction. Both countries have emphasized the reduction of strategic arsenals. The United States has spent billions of dollars in "Nunn-Lugar" funds and related programs to assist Russia with dismantling nuclear weapons and ensuring security of its nuclear weapons, weapons grade material, and other weapons of mass destruction. Russia has attempted to use its significant oil and gas exports as sources of political influence. In July 2009, President Obama and then Russian President Medvedev established a Bilateral Presidential Commission dedicated to improving coordination between the two countries, identifying areas of cooperation, and pursuing joint projects that strengthen strategic stability, international security, economic well-being, and the development of ties between the Russian and American people.

⁶There is no evidence that Applicant, his spouse, or her family in Russia are involved in or connected with any criminal activity on behalf of Russia.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(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.

Applicant and his spouse have limited contacts with her brother, aunts, uncles, cousin, and a Russian embassy employee, who are all citizens and residents of Russia. Security concerns relating to them as described in SOR ¶¶ 1.c to 1.e are not substantiated.

Applicant's marriage to a Russian citizen, who has not completed the process of becoming a U.S. citizen, raises a security concern. She and Applicant's children have visited Russia in the last three years. She has a close relationship with her mother, and she communicates with her mother frequently. Her mother has visited Applicant and his family outside of Russia. Applicant's spouse has lived in the United States less than two years.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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, or the country is known to conduct intelligence operations against the United States. Russia's complicated, competitive relationship with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate his relationship with his spouse and her relationship with her mother do not pose a security risk, and he is not in a position where he might be forced to choose between loyalty to the United States and his spouse and mother-in-law. With its mixed human rights record, political, economic and military rivalry with the United States, and aggressive pursuit of sensitive U.S. information, it is conceivable that Russia might target any Russian citizen or former citizen living in the United States in an attempt to gather valuable U.S. information.

There is evidence that Russian intelligence operatives seek classified or economic information from U.S. businesses and government agencies. Applicant's connections to his spouse and her relationship with her mother create a potential conflict of interest because these relationships are sufficiently close to raise a possible security concern about his desire to help his spouse and her mother by providing classified information.

Applicant lives with his spouse, who is a Russian citizen in frequent contact with her mother living in Russia. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7(d).

The Government produced substantial evidence of Applicant's contacts with his spouse and her relationship with her mother to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a), 8(b) and 8(c) apply with respect to Applicant's relationship with his spouse's brother, aunts, uncles, cousin, and a Russian embassy employee, who are all citizens and residents of Russia because of his limited contacts with them. "It is unlikely [he] will be placed in a position of having to choose between the interests of [these in-laws living in Russia and a clerk in the Russian embassy] and the interests of the U.S." His infrequent contacts with these in-laws and a clerk in the Russian embassy and his lack of a close relationship with them result in a low potential of him being forced to choose between the United States and Russia. He met his burden of showing there is "little likelihood that [these relationships] could create a risk for foreign influence or exploitation." See *generally* ISCR Case No. 03-04300 at 5 (App. Bd. Feb. 16, 2006) (citing ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002)). His contacts and communications with his spouse's brother, aunts, uncles, cousin, and a Russian embassy employee are sufficiently casual and infrequent as to not create a risk of foreign influence or exploitation.

None of the mitigating conditions apply to with respect to Applicant's relationship with his spouse and her relationship and frequent contacts with her mother. Applicant has an emotional bond with his spouse. She communicates with her mother in Russia regularly and frequently. Although Applicant's close relationship with his spouse and her

relationship and frequent contacts with her mother are important positive reflections of character, the same close relationships raise security concerns for possible foreign influence.

There is no evidence that Applicant's spouse and her mother have been political activists, challenging the policies of the Russian government. There is no evidence these relatives currently work for or have ever worked for the Russian government or military or any news media. There is no evidence that terrorists or the Russian government have approached or threatened Applicant, his spouse or his mother-in-law for any reason. There is no evidence that his mother-in-law currently engages in activities which would bring attention to her or that they or other Russian elements are even aware that Applicant works for a government contractor or might have access to classified information. As such, there is a reduced possibility that his spouse or her mother would be targets for coercion or exploitation.

Applicant deserves some credit because of the reduced possibility that Russia will exploit his mother-in-law because of the low profile she has in Russian society. However, Applicant's close relationship with his spouse and her relationship and frequent contacts with her mother and the nature of the Russian government and its complicated and sometimes contentious relationship with the United States, all weigh against mitigating security concerns. See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

Applicant's close relationships with his relatives living in the United States and his strong connections to the United States tend to mitigate foreign interest security concerns. Applicant was born and raised in the United States, and he honorably served in the U.S. Army for six years. He is fully inculcated with U.S. values. Applicant has worked for government contractors with dedication and distinction. He has substantial property and investments in the United States, including his employment and disability income, and no property or investments in Russia. He has many friends and colleagues in the United States. He is a loyal, dedicated U.S. citizen. He has provided letters and witness statements to corroborate his honesty, loyalty, reliability, and trustworthiness.

In a case where the applicant had limited contacts with his Russian in-laws, as he could not speak Russian and they could not speak English, the Appeal Board stated:

[A]s 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, e.g., ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). . . [T]he Judge's conclusion that, through his wife, Applicant has close ties to his Russian in-laws is consistent with the record evidence. The Judge's further conclusion that Applicant had failed to mitigate the

security concerns arising from this relationship is also consistent with the record evidence. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009).

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.

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

There are significant factors supporting approval of Applicant's access to classified information. Applicant was born in the United States, lived in the United States, except when serving overseas on the Army's behalf or as a DoD contractor (except for some brief visits to Russia and some other countries). Applicant's wife and children and other relatives live in the United States. Applicant is an excellent employee and U.S. citizen. He compellingly explained why his loyalty is to the United States, rather than to Russia. He thoroughly developed the evidence showing his connections to the United States and to Russia. I found his statements to be honest, candid and credible. He provided 14 corroborating statements concerning his loyalty and trustworthiness. He provided favorable recommendations of employers and friends going back more than 13 years.

Applicant promised not to comply with any Russian request for information. I found this promise to be sincere and credible. However, in ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 9, 2007), the Appeal Board reversed an administrative judge's decision to grant an applicant's clearance because he gave too much weight to the Applicant's "strong ties to the U.S." and determined there was insufficient evidentiary support for the conclusion that he "can be trusted to resolve any conflict of interest . . . in favor of the U.S." The Applicant in ISCR Case No. 06-24575 said he would not act against the U.S.

if faced with the choice. However, the Appeal Board gives such promises limited weight stating:

An applicant's stated intention as to what he would do in the future is of relatively little weight, given the record in this case. See ISCR Case No. 03-09053 at (App. Bd. Mar. 29, 2006) ("An applicant's stated intention about what he or she might do in the future under some hypothetical set of circumstances is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the applicant has acted in a similar manner in the past under similar circumstances.")

Id. at 4. See also ISCR Case No. 07-00029 at 4 (App. Bd. Dec. 7, 2007) (criticizing the administrative judge's reliance on an applicant's promise to choose the U.S. over another country should a conflict arise, and reversing the administrative judge's decision to grant a clearance). Applicant's promise to reject any Russian attempts to seek classified information from him receives limited weight.

A Guideline B decision concerning Russia must take into consideration the geopolitical situation in Russia, as well as the dangers existing in Russia.⁷ Russia is a diplomatic and strategic partner of the United States in some areas where both countries have mutual interests. For example, Russia is a key partner in efforts to reduce proliferation of weapons of mass destruction and control of nuclear materials. Russia's relationship with the United States has significantly changed over the decades and is likely to change again in the future. Russia was an important U.S. ally in World War II, and then an enemy of the United States during the Korean and Vietnam Wars. Russia was the United States' primary antagonist through the Cold war. Russia has a mixed to poor human rights record. Russia is one of the most aggressive nations in the collection of U.S. intelligence and sensitive economic information. Although terrorists in Russia are not known to target relatives of Americans, there is a continuing problem in Russia with terrorists, which is a factor in the analysis.

One element increasing the foreign influence security concern is Applicant's spouse's frequent contacts with her mother, her relatively recent visit to Russia, her limited time in the United States, and her lack of U.S. citizenship. He clearly has a close relationship with his spouse, and she is vulnerable through her mother to Russian coercion and non-coercive measures because of where her mother lives. Her mother also receives a pension, and the Russian government could exert pressure on them by threatening to stop her pension. Because Russian government and intelligence personnel may violate Russian law, they are more likely to use improper or illegal means to attempt to obtain classified information through Applicant's mother-in-law.

After carefully weighing the evidence of his connections to Russia, and to the United States, I conclude Applicant has failed to carry his burden of fully mitigating the foreign influence security concerns.

⁷ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

I have carefully applied the law, as set forth in Department of Navy v. Egan, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence concerns are not mitigated, and eligibility for access to classified information is denied.

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 and 1.b:	Against Applicant
Subparagraphs 1.c to 1.e:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

Mark Harvey
Administrative Judge