DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-14872
	)	
Applicant for Security Clearance	)	

Appearances

For Government: John Bayard Glendon, Esquire, Deputy Chief Department Counsel
For Applicant: Elizabeth L. Newman, Esquire

04/02/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 26 October 2012, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B, Foreign Influence and E, Personal Conduct.[2] Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 17 December 2012 and I convened a hearing 29 January 2013. DOHA received the transcript 6 February 2013.

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

[2]DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; 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 33-year-old consultant employed by a defense contractor since October 2005. He seeks to retain the security clearance he has held since approximately June 2006.

On 27 June 2010, ten alleged secret agents were arrested in the United States (U.S.) after a multi-year Federal Bureau of Investigation (FBI) operation uncovered a network working in the U.S. collecting information and recruiting sources for Russia (HE I, Part III). The arrests were based, in part, on a sealed complaint dated 27 June 2010, detailing aspects of the investigation (GE 3). The agents were part of an "illegals" program where they would establish themselves under "deep cover" in the U.S., becoming so Americanized that the would not draw any attention to themselves.

The FBI agent who swore out the complaint stated that the agents were divided into two categories: those who used their own names and those who used undercover names. Agents who used their own names typically received less training in their trade craft and were not usually paired with another agent. The seven agents who were undercover were each paired with another agent. One was paired with a Hispanic woman who used her own name; the remaining six were paired off with each other. Except for the four paired agents (who new each other as agents), none of the agents were aware of the existence or details of the other agents (GE 3).

The ten alleged secret agents were arraigned on 28 June 2010. On 8 July 2010, each of the ten defendants pleaded guilty to conspiracy to act as an agent of a foreign government without notifying the Attorney General (AG) as required by law (HE I, Part IV). The plea agreement required each defendant to disclose their true identities and citizenship. Nine of the ten secret agents were Russian; the tenth was a Hispanic woman who was paired with one of the Russians. Two other agents used their own names, and were not paired with another agent. One of those agents is the agent (Agent) who was peripherally involved with Applicant. The nine other agents had been in the U.S. for many years. The agent who was peripherally involved with Applicant had only been in the U.S. since about 2009.

The ten convicted secret agents were immediately expelled from the U.S. and turned over to the custody of the Russian Federation in exchange for four persons jailed in Russia for alleged contact with Western intelligence agencies. When the story broke in the news media on 29 June 2010, Applicant learned that one of the agents who was arrested had worked for his friend's travel agency. He did not recognize the name of the Agent, but did some on-line research that produced a picture of the Agent. Applicant realized that the Agent was someone he had met on three occasions through his friend. The next day, he reported this information to his facility security officer (FSO), resulting in his hand-written statement (GE 5), the FSO's report (GE 6), a September 2010 sworn statement (GE 2), and generating the investigation that has led to this hearing.

Applicant, his parents, and siblings are native-born U.S. citizens, raised in the U.S. He has no foreign relatives. Applicant attended a well-known university in the mid-west from August 1998 to May 2002, when he received an undergraduate degree in political science. During his senior year, he took several political science courses with a foreign exchange student (FES) from Russia, who was attending the same university as part of a study abroad program during his junior year. Applicant himself participated in a study abroad program during the spring semester of his junior year. The FES had also studied in the U.S. for a year during highschool, during which time he became good friends with his host brother (HB).

Applicant and the FES spent significant time together outside of class, working on their course work together. During that year, the HB (who was attending a different university in a neighboring state) came to visit the FES several times and Applicant got to know him as well.

After college graduation, Applicant planned to take a gap year before entering graduate school. He planned to spend a least part of that year traveling. He had already traveled to Mexico a couple of times and throughout much of Europe, mostly western Europe. He decided to travel in Asia, particularly to Japan and South Korea. The FES, who by this time was finishing his year of study abroad, invited Applicant to travel to Russia as part of his Asia travel. Applicant accepted the invitation.

Applicant's expired passport (GE 7) shows that Applicant traveled to Asia in July 2002. He spent about seven days in Japan and two in South Korea, before flying to Vladivostok to meet the FES and his HB. Together, they took the two-day train ride to the FES's hometown in southeastern Siberia. Applicant complied with Russian law governing foreign travelers. Those requirements included a visa, registering as a foreign national once he arrived in country, and obtaining and carrying a foreign national identification card. Applicant spent six weeks in Russia. About half that time overlapped with the HB. He met FES's family, including his younger brother (YB). Except for the YB, none of the family members spoke English, so FES or YB had to do the translating. Applicant left Russia in August 2002, transited through South Korea (where he was delayed a couple of days because of a typhoon in the area), and flew home to the U.S. in early September 2002.

Applicant entered graduate school in August 2003 and received his graduate degree in international affairs in May 2005. During his last year in graduate school, he simultaneously served an internship with a well-recognized foreign policy think-tank. His duties were largely clerical and administrative. He met some Russian government officials in the course of his duties when he was coordinating meetings and conferences for the think-tank.

Applicant obtained his current job in October 2005, and completed his clearance application in March 2006 (GE 1). As required by the application, he disclosed his extensive foreign travel, including his trip to Russia. He reported his contacts with foreign-government officials as part of his duties with the think-tank. And, he reported

his association with the FES. In about June 2006, Applicant received his clearance, which he has held without incident since. It appears he obtained his clearance as a routine administrative matter, because the Government produced no evidence from that clearance adjudication except GE 1.

At the time Applicant completed his clearance application, FES had returned to the U.S. after his graduation from a Russian university, to attend graduate school in a different state. Applicant's contacts with FES after August 2002 were limited to monthly emails. That changed when the FES entered graduate school because the FES visited with his HB, who was working in the same area as Applicant. Typically, the FES would contact Applicant after he was already in town, and they would meet for drinks or dinner, about every six months.

After FES finished graduate school, he opened a travel agency, specializing in trips to Russia, particularly Siberia. Around August 2009, the FES relocated the travel agency to the same area where Applicant worked. Applicant's contacts with the FES increased to about every couple of months. However, these contacts now also included contacts with the YB, who had come to the U.S. to work for his brother, and the HB's girlfriend—a young female employee (GF) of the travel agency from Russia. The HB and the GF became engaged and married. The HB had to leave employment with another Government agency (AGO) when they started living together because of the special access program prohibition on living with a foreign national. However, the HB retained his clearance and now works for a different employer.

In February 2010, Applicant and the HB were invited to two social events for the travel agency staff. The first, in early February, was a dinner at a nearby chain steak house, celebrating the agency's growth during the past year. At that dinner, Applicant was introduced to the Agent, but had no conversation with him because he was at the opposite end of the table. In late February, there was a similar gathering with more-or-less the same people at a happy hour. Again, the Agent was there, and again, Applicant did not speak to him because he was at the other end of the table. Applicant encountered the Agent a third time in late June 2010, when Applicant, the FES and his girlfriend, the YB, and several others gathered at the HB's and the GF's apartment to watch the World Cup elimination round match between the U.S. and Ghana. That match occurred on 26 June in the mid-afternoon. Just before the match began, the Agent and his date showed up to watch the match. The Agent sat next to Applicant during the match. They spent the match discussing the relative merits of soccer and the U.S. men's national team. Applicant never saw the Agent in person again.

Ironically, after the match, the Agent went to meet an under-cover FBI agent posing as the Agent's Russian contact to get instructions about a "dead drop" the Agent was to make the following day. The Agent made the drop the next day as instructed. The drop was videotaped by Government agents, and formed part of the basis for the arrest warrant for the Agent and another named agent (GE 3). The Agent was arrested the same day, with the disposition noted above.

During Applicant's meeting with his FSO, they discussed the circumstances of Applicant meeting the Agent, as well as his contacts with the FES, the YB, and the GF. Applicant had not previously seen anything in his relationships with the YB and the GF that he thought he had to report. The FSO was sufficiently unsure about whether Applicant should have reported the contacts that he recorded those details out of an abundance of caution. Applicant's FSO also advised him to avoid contact with his Russian friends until the investigations were completed, and he complied. About five or six weeks later, FBI agents interviewed Applicant for about a half hour in a local coffee shop. Applicant reiterated the information he had provided to the FSO. After the interview, Applicant asked whether he could resume his contacts with his Russian friends, and was told he could, "those guys are clean. There's nothing wrong with those guys." (Tr. 71-72) According to Applicant, the FBI also interviewed the FES and the HB. Applicant resumed his contacts with his Russian friends and the HB. He saw the FES about once per month from fall 2010 to early 2011, when the FES returned to Russia to run that end of the travel agency's business. The YB still works at the agency but the GF does not. Applicant sees the YB, the HB, and the GF occasionally. The HB gives him occasional updates on the FES, but Applicant has had no personal contact with the FES in over two years.

The FES, his YB, the HB's GF, and the Agent were all from the same part of Russia. They had either gone to college together or to nearby colleges. The Agent was a couple of years behind the FES in college, but they knew each other. None of Applicant's Russian contacts, including the Agent, ever tried to elicit protected information from him. He knows to report any such attempts to his FSO or the FBI.

Russia 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.

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's work reference—his manager for the last several years—considers him very honest and trustworthy, and recommends him for his clearance, in part because he demonstrated his reliability by reporting his contact with the Agent (Tr. 157-162). His on-and-off girlfriend since about February 2006, similarly considers him extremely trustworthy and reliable, and believes that he demonstrated that by reporting his happenstance contact with the Agent (Tr. 145-154). She is a cleared State Department employee since January 2005, now detailed to a very sensitive position.

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 guidelines are Guideline B (Foreign Influence) and Guideline E (Personal Conduct).

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, 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

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

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

In this case, the Government failed to establish a case for disqualification under Guideline B regarding Applicant's Russian friends. However, for purposes of my analysis of the evidence, I will presume that the Government established a case for disqualification.

Starting in reverse order of the nine potential conditions that **could** raise a security concern and that **may** be disqualifying, Applicant has not engaged in conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.[8] His last, and only, travel to Russia was in summer 2002. He engaged in no conduct that would increase his vulnerability. His behavior with his Russian friends in the U.S. similarly reveals no conduct that would increase his vulnerability.

Neither the Government nor Applicant presented any evidence indicating that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation,

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[4]AG ¶ 6.

[5]AG ¶ 7 (a).

[6]AG ¶ 7 ©.

[7]AG ¶ 7 (e).

[8]AG ¶ 7 (I).

pressure, or coercion.[9] Applicant does not discuss the specifics of his work with his Russian friends, and none of them have ever attempted to elicit protected information from Applicant or shown any particular interest in such information. Similarly, he has not had any unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service.[10] None of his Russian friends seems to be anything other than what they appear to be: the owner of a legitimate travel agency and several employees of that company. The one known agent of a foreign intelligence agency was not known to Applicant's Russian friends as such. Therefore, it could not have been known or suspected by Applicant. Moreover, Applicant's three contacts with the Agent meet no reasonable definition of "association" in the context of security determinations.

Applicant did not fail to report, where required, association with a foreign national.[11] Applicant fully reported his association with the FES on his clearance application in March 2006. Of course, at that time Applicant's Russian associate was not the owner of the travel agency and Applicant had few contacts with him. Nevertheless, Applicant reported the relationship. There was nothing in the resumption of sporadic in-person contact when the FES came to visit his HB that should have triggered Applicant's reporting the contacts to his FSO. Nor was there anything in Applicant's becoming more acquainted with the YB and the HB's GF to suggest to him that he should report those contacts to his FSO. Finally, Applicant's three contacts with the Agent constituted no reason to report a non-existent association. When Applicant had reason to believe that he might have met the Agent, he first took steps to discover if he had, and upon discovering that he had met the Agent on three occasions (two of which he did not even engage the Agent in conversation), he immediately informed his FSO of the circumstances of those meetings. The Government produced no evidence that Applicant was disciplined, reprimanded, or admonished for failing to disclose his contacts with the Agent, the YB, and the HB's GF until June 2010.

Applicant has no 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.[12] Applicant lives alone so there is no relationship that would create a heightened risk of foreign inducement, manipulation, pressure, or coercion.[13] Applicant's on-and-off girlfriend for the last several years is a cleared U.S. Government employee, detailed to a sensitive U.S. agency, and they do not live together. Further, the Government produced no evidence that counter-

[9]AG ¶ 7 (h).

[10]AG ¶ 7 (g).

[11]AG ¶ 7 (f).

[12]AG ¶ 7 (e).

[13]AG ¶ 7 (d).

intelligence information, classified or not, indicates that Applicant's access to protected information may involve unacceptable risk to national security.[14]

There is nothing in Applicant's connections to his Russian friends that creates a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help a foreign person, group, or country by providing that information[15]. Applicant has no desire to provide such information, none of his Russian friends have evinced any interest in obtaining such information, and Applicant knows his reporting requirements if any of them should ever try to obtain such information. The only disqualifying factor that remotely comes close to raising security concerns is Applicant's contact with a foreign family member (none), business (none), or professional associate (none), **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 (my emphasis).[16] In my view, the Government's case fails the "if" test: there is no heightened risk because of Applicant's Russian friends. Two of the three live in the U.S. All of them are, or have been, involved in the travel agency. None of them have any connection to the Russian government.

However, assuming, as I have, that the Government has passed the "if" test, I will examine the six potential conditions that could mitigate the security concerns. Two are completely inapplicable on the facts. Applicant's foreign contacts and activities were not on U.S. Government business or approved by the cognizant security authority.[17] Further, Applicant has no foreign business, financial, or property interests that could be used to influence, manipulate, or pressure him.[18]

The remaining mitigating conditions all apply to varying degrees. The nature of Applicant's relationships with foreign persons does not extend beyond friendship, and a casual friendship at that. It is extremely unlikely that Applicant will be placed in a position of having to choose between foreign interests and the interests of the U.S.[19] Similarly, there is no conflict of interest, both because the Applicant has no demonstrated loyalty or obligation to his foreign friends, and because his deep and longstanding relationships and loyalties in the U.S. are such that he can be expected to resolve any conflict of interest in favor of the U.S. interest.[20]

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[14]AG ¶ 7 (c).

[15]AG ¶ 7 (b).

[16]AG ¶ 7 (a).

[17]AG ¶ 8 (d).

[18]AG ¶ 8 (f).

[19]AG ¶ 8 (a).

[20]AG ¶ 8 (b).

Applicant's contact or communication with his foreign friends has varied in frequency over the years, but has amounted to casual contacts.[21] Occasional emails were exchanged when Applicant and his friends were some distance apart; occasional dinners or gatherings to watch sports occurred when they were living in the same area. Finally, Applicant promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups or organizations from a foreign country.[22] Applicant reported the one meaningful foreign contact (FES) on his March 2006 clearance application, as required. He also fully reported his foreign travel and his contact with Russian government officials as part of his employment at the think-tank.

There is no evidence that Applicant was ever given clear guidance about what constituted reportable contacts with foreign persons. Indeed, what evidence there is suggests that the standard is somewhat amorphous, giving each individual substantial leeway in determining what contacts should be reported. Applicant deemed his contacts with the YB and the HB's GF sufficiently casual to not require reporting. His first two contacts with the Agent clearly did not require reporting, consisting as they did of brief introductions across opposite ends of a table. Even his conversations with the Agent while watching the World Cup match would not have necessarily been reportable, consisting of nothing but sports discussion. But when the ten foreign agents were arrested and it appeared that Applicant might have met one of the agents who were arrested, Applicant did what the Government expected of him: He made reasonable inquiries to discover whether he had met one of the agents, and when he discovered that he had met one of the agents—albeit under a nickname—he immediately reported the contacts to his FSO, resulting in the investigation that has generated this hearing.

There is nothing in the record to suggest that Applicant can be subject to influence because of his Russian friends. Applicant was born in the U.S. and has lived in the U.S. all his life. All his immediate family members are native-born, resident citizens of the U.S. His current girlfriend is a native-born U.S. citizen, employed and cleared by the U.S. Government. Applicant's financial interests are all in the U.S. He stayed away from his Russian friends when his FSO recommended he do so until the investigation was complete.

Even finding a potential case for disqualification under ¶¶ 7 (a) and (b) regarding Russia, I find the security concerns mitigated. Applicant has no direct connection to Russia. While Russia certainly has the means and interest in collecting protected information, Applicant has no sense of obligation or loyalty to any of his Russian friends that could provide a means of influencing him.[23] Applicant's loyalty to the U.S. is

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[21]AG ¶ 8 (c).

[22]AG ¶ 8 (e).

[23]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,

undisputed. Certainly, his relationships and loyalties in the U.S. are so deep and longstanding, and his sense of loyalty or obligation to his foreign friends so short and minimal (even considering the 10 years he has known the FES), 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.[24] Finally, there is no reasonable characterization of his contacts with his Russian friends as other than casual and they are not so frequent that they suggest any avenue for influencing Applicant.[25] I conclude that it is unlikely he can be pressured based on his contacts with his Russian friends. 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 process before an impartial trier of fact. I note that Applicant is a U.S. citizen, born in this country of parents who themselves are U.S. citizens. All of his other relatives 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. Indeed, all the Appeal Board cases cited by Department Counsel in closing argument involve either an Applicant who has become a naturalized U.S. citizen, but still has family in the country of origin, or an Applicant who has married a foreign national (whether or not now naturalized) who still has family in the country of origin. The facts of this case demonstrate that Applicant's ties to Russia are casual at best and present little avenue for exploitation by Russia.

The Government failed to establish a case for disqualification under Guideline E. To the extent that the SOR alleges facts that raise security concerns, those concerns are all fully addressed by the disqualifying and mitigating conditions of Guideline B. Despite the conclusory wording of the Guideline B allegations, those allegations applied to Guideline E do not establish conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. SOR 1.a (Your friend is a citizen and resident of the Russian Federation, and owns a travel agency which employed a Russian intelligence agent.) can only demonstrate poor judgment if it can be shown that the FES knew or should have known that he was employing a Russian intelligence agent, and that Applicant knew or should have know that the employee was a Russian intelligence agent. The Government established neither of these facts, and neither is a reasonable inference base on the facts that were established. This is not surprising, given that the Agent's success was predicated on avoiding detection.

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organization, or government and the interests of the U.S.;

[24]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;

[25]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;

Similarly, SOR 1.b (You traveled to the Russian Federation in 2002, for six weeks, registered as a foreign national and obtained a Russian identification card for use while in Russia.) states nothing more than the fact that—while not in a cleared status—Applicant traveled to Russia for six weeks in 2002, as a tourist and complied with Russian laws governing visas and registration as a foreign national. It should not need stating that all foreign travelers must comply with the receiving state's travel laws. Further, avoiding criminal conduct while traveling in foreign countries demonstrates good judgment.

SOR 1.c (You have friends that are Russian citizens living in the U.S.) states no issue of poor judgment unless shown that Applicant knew or should have known that any of them are agents of a foreign government. Again, there are no facts in the record to establish that any of Applicant's Russian friends are agents of a foreign government, and the fact that one of their co-workers turned out to be a foreign agent cannot be used to infer that Applicant's Russian friends must have known this, particularly where the Agent's success was predicated on his becoming more and more Americanized to avoid detection.

Finally, SOR 1.d (You have socialized on three occasions in 2010 with an individual arrested by the FBI and charged with conspiracy to act as unregistered agents of a foreign government, and deported as part of an exchange agreement with Russia.) demonstrates poor judgment only if Applicant knew or should have known that the individual was a Russian agent. Or, failed to act as required once he suspected the individual was a Russian agent. In this case, Applicant acted as the Government required him to act once he had suspicions about the individual. He made further investigation, and when he discovered that he had met the individual, he reported it to his FSO the next day—demonstrating good judgment.

Having demonstrated that the alleged conduct does not raise security concerns under Guideline E, discussion of the mitigating conditions is unnecessary. I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraphs a-d:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph a:	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