



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-05092
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Alec Sauchik, Esq.

12/13/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by his business-related foreign travel, as well as his attendance and presentations at professional conferences overseas. However, he did not mitigate security concerns raised by his relationship to a relative who is a citizen and resident of Ukraine. Clearance is denied.

Statement of the Case

On September 22, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the foreign influence and involvement in outside activities guidelines.¹ Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information.

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On June 8, 2016, a date mutually agreed to by the parties, a hearing was held.² Applicant testified, and Exhibits 1 – 7 and A – E were admitted into the administrative record without objection. Applicant's objection to Exhibit 8 was overruled and the exhibit was admitted into the record.³ After the hearing, Applicant timely submitted additional documents that were collectively marked Exhibit G and admitted into the record without objection. The transcript of the hearing (Tr.) was received on June 16, 2016.

SOR Amendment

The record was left open until July 1, 2016, to allow Department Counsel to file a motion to amend the SOR.⁴ The motion, which was marked App. Exh. IV, was submitted after the deadline passed. Department Counsel moves to amend the SOR to add allegation "1.e. Your sister-in-law, brother-in-law, and stepson are citizens of and reside in the (sic) Ukraine." The Government failed to establish good cause for the late filing and, thus, the untimely motion is denied. ISCR Case No. 14-03641 at 3-4 (App. Bd. Apr. 17, 2015) (having granted a party 26 days after hearing to file post-hearing matters, the party failed to show the judge erred in denying request for more time).

Additionally, Applicant had previously disclosed these foreign familial connections to the Government. See Exhibit 7 at 2-3 (during 2005 background interview, Applicant disclosed and discussed his stepson, as well as the purchase of property in Ukraine for his stepson's use). The DOD CAF elected not to allege these foreign familial connections in the SOR and counsel did not move to amend the SOR prior to the hearing. After weighing the interest of the parties, the Government, and industry in a fair, just, and expedient decision, I further find that Department Counsel did not establish good cause to amend the SOR.⁵ Directive, Enclosure 3, ¶ E3.1.17. Nonetheless, recognizing the paramount importance of safeguarding national security, I have examined the totality of Applicant's foreign connections and contacts in resolving the security concerns at issue. ISCR Case No. 14-03497 at 3 (App. Bd. March 9, 2015)

² Correspondence with the parties, the notice of hearing, and the case management order (CMO) are attached to the record as Appellate Exhibits (App. Exh.) I – III, respectively.

³ Applicant contends that the portion of Exhibit 8 relating to Ukraine is inaccurate. I overruled Applicant's objection after reviewing the cited source documents, but left the record open to allow Applicant the opportunity to present matters in support of his position. (Tr. 17-21) I have considered Applicant's argument and post-hearing matters in considering the weight to extend Exhibit 8.

⁴ Initially, I left the record open to June 24, 2016, for Department Counsel to file his motion. At counsel's request, the deadline was extended to July 1, 2016. (Tr. 145-49) Although some of the matters that contributed to counsel's late filing were beyond his control, he failed to request an extension of time before the newly established deadline passed.

⁵ Judicial economy also weighs against granting the late motion. I coordinated with the parties about scheduling the hearing in April 2016. Thus, both sides had nearly two months to prepare for the hearing. The hearing was one of eleven that were scheduled over three days, and was the second of three hearings to be heard on the same day. The hearing started before the scheduled start time of 1000 and did not end until 1309 (or, after the next hearing was scheduled to start). See App. Exh. I and V; Tr. 4, 160. See *also*, Judge Ra'anani's dissenting opinion in ISCR Case No. 14-06592 at 4 (App. Bd. Apr. 20, 2016), citing "the current concern for judicial economy" as a basis for not ordering a remand.

("permissible for DOHA [judges] to consider non-alleged conduct and circumstances . . . on such issues as mitigation, rehabilitation, and a whole-person analysis.")

Findings of Fact

General background⁶

Applicant was born, raised, and educated in Ukraine when it was part of the former Soviet Union. He and his wife of now nearly 30 years immigrated to the United States in approximately 1990. They are naturalized U.S. citizens. He has three adult children, all of whom are foreign nationals. One of his children is a U.S. resident.

Applicant is an accomplished, certified translator and interpreter in Russian and Ukrainian. He has built a successful business providing translation services, including as a subcontractor on U.S. Government (USG) contracts. He was initially granted a security clearance in connection with his employment as a federal contractor over ten years ago. He has served as a translator in support of USG agencies and military for nearly 20 years, including overseas assignments.

Foreign connections and contacts in Ukraine (SOR 1.a)⁷

In 2005, Applicant submitted his initial security clearance application (SCA). He has subsequently gone through at least two additional security clearance background investigations. During these investigations, Applicant disclosed and discussed his foreign connections and contacts, including his mother-in-law who is a citizen and resident of Ukraine. Applicant's mother-in-law lives with his wife's twin sister, and they both receive a pension from the Ukrainian government. Applicant's wife has frequent contact (at least once a week) with her mother, and travels to Ukraine once or twice a year to visit her mother and other family members in Ukraine. Applicant and his wife have sent money to her family in Ukraine.

On the initial 2005 SCA, Applicant disclosed that he and his wife purchased an apartment in Ukraine for her son's use. He also disclosed two foreign investment accounts with a total approximate value of \$200,000. Applicant closed both of these foreign accounts and used some of the proceeds to help his child living in the United States purchase a home. He testified that he and his wife do not own any foreign property or have any foreign assets. (The record is silent as to what happened to Applicant and his wife's ownership interest in the Ukrainian property.)

Before immigrating to the United States, Applicant worked for over 15 years as a senior research associate for a government or quasi-governmental agency that was part

⁶ The pertinent portions of the record relied upon for the information in this section can be located at: Tr. 25-43, 61-63; Exhibit (Ex.) 1, 2, 3, 5, 7, C, F.

⁷ The pertinent portions of the record relied upon for the information in this section can be located at: Tr. 26, 68-77, 97-110, 120; Ex. 1 at 24-27; Ex. 3 at 3-5; Ex. 6 at 4; Ex. 7, Ex. F at 5.

of the Soviet Academy of Sciences. In 1994 or 1995, while visiting Ukraine, he had a chance meeting with a former professional acquaintance who had worked for the same agency. He had not seen this person in over 15 years. He has contact with this person maybe once a year. When this acquaintance has traveled to the United States, Applicant has not met with her. She has never requested any favors or assistance from Applicant, and Applicant has not provided her any assistance, financial or otherwise. He disclosed this foreign contact during his background investigations.

*Foreign connection and contact in Russia (SOR 1.b)*⁸

From 1993 to the present, Applicant has been hired to provide translation services by a U.S.-based company that is the primary contractor on several federal contracts. Applicant became acquainted with one of the project managers who worked for this prime federal contractor. This person married a Russian national and moved to Russia in 2013. Applicant has had sporadic, infrequent contact with this former professional acquaintance since she moved to Russia. She has never requested any information or favors from Applicant, and vice versa. He disclosed this foreign contact during the course of his security clearance background investigations.

*Overseas business travel and attendance and presentation at international conferences (SOR 1.c, 1.d, and 2.a)*⁹

Applicant is a member of several professional associations. He has been invited to present at international conferences organized by these associations, including several conferences held in Israel and one in China nearly ten years ago.¹⁰ Before and after traveling to these conferences, Applicant has complied with security reporting requirements. He disclosed on his SCA and discussed during the course of his background investigations his attendance and presentation at these conferences. While attending these conferences, Applicant has made professional contacts and subsequently hired presenters who demonstrated a proficiency in other languages that he does not speak. He usually hires these other translators through an Israeli-based professional association because in his experience he has found that these translators possess the high-quality proficiency he is seeking and are usually less expensive than other similarly qualified translators. He has hired about a half dozen translators in this fashion. He has hired them on a project-by-project basis and strictly as subcontractors, not direct employees of his company. He maintains a professional, business relationship with some of the persons he has hired, and has met with them in social settings while traveling abroad.

⁸ The pertinent portions of the record relied upon for the information in this section can be located at: Tr. 77-84, 128-132; Ex. 4 at 1.

⁹ The pertinent portions of the record relied upon for the information in this section can be located at: Tr. 35-61, 85-95, 113-120, 132-142; Ex. 1 at 28-30; Ex. 2 at 3-8; Ex. 3 at 10-14; Ex. B, D, F.

¹⁰ Applicant's attendance and presentation at the conferences held in Israel and the one in China were alleged as a Guideline B and Guideline L security concern. However, no matters for administrative notice about any foreign countries were provided, except for Russia and Ukraine.

Applicant's proficiency as a translator has provided him a substantial amount of business income over the years. His estimated annual business earnings range from \$70,000 to \$200,000. Ninety percent of his clients are from the United States, with 30-40% of his U.S.-based work coming through federal contracts. The remaining ten percent of Applicant's total earnings emanate primarily from contracts with commercial interests in the United Kingdom. At times, these contracts, including USG contracts that Applicant has been awarded, have required him to travel overseas. His overseas business-related travel has included travel to Russia, China, and Israel.

Applicant has complied with all security reporting requirements regarding his foreign travel, both business and personal. He submits a trip report to his security officer even for non-USG-related overseas trips, and dutifully complies with annual security training. He freely provided a list of his clients and updated foreign travel information during the course of his security clearance processing.

Applicant does not have any direct contracts with clients in Russia or Ukraine. However, he has been hired and performed translation work where the "end users" (or the recipient of his services) were companies and quasi-governmental agencies in Russia and Ukraine. One of his USG contracts required him to perform translation services for a quasi-governmental Ukrainian agency in Ukraine and a commercial contract with a large U.S. pharmaceutical company required him to travel to Russia for less than three days. Applicant testified that he does not have a business relationship with the end user of his services. Instead, the business relationship is with the client who hired him to do the work. He submits blind bids without knowing who the end user may be until after he is awarded the contract.

Applicant does not have any contracts with foreign governments. He testified that he has never performed compensated or volunteer work for a foreign country. He also testified that he has never been approached by an agent of a foreign power or asked to divulge classified information. The contracts Applicant signs to perform translation work generally include a non-disclosure provision. None of these non-disclosure agreements are with foreign governments. He does have about six non-disclosure agreements with foreign companies for past translation work that he performed, but none of these agreements are with companies in Russia, Ukraine, or Israel.

*Financial and other ties to the United States*¹¹

Applicant described his financial situation as "comfortable." He recently purchased a home in the United States. His net worth is approximately \$800,000. All of his assets are in the United States. His wife works full-time for a hospital in the United States, and has been with her current employer for decades. A U.S. servicemember provided a reference letter, noting Applicant's professionalism and the immense value Applicant provided the USG during an overseas military exercise.

¹¹ The pertinent portions of the record relied upon for the information in this section can be located at: Tr. 64-67; Ex. E.

Administrative Notice (Russia and Ukraine)

Administrative notice may be taken of uncontroverted facts regarding a foreign country set forth in reliable and relevant U.S. Government reports. Additionally, the official position of relevant federal agencies or the statements of key U.S. Government officials may be appropriate for administrative notice. Generally, the party requesting administrative notice must provide the source document, either the full document or relevant portion, to allow an administrative judge to assess the reliability, accuracy, and relevancy of any matter requested for administrative notice.¹² After reviewing the parties' respective requests for administrative notice, to include the source documents cited therein, the following pertinent facts regarding Russia and Ukraine are noted:

Russia is one of the leading state intelligence threats to the United States. Russia has extensive and sophisticated intelligence operations, which they use to target U.S. and allied personnel with access to sensitive computer-network information. Russia has a poor human rights record. The United States, along with other members of the international community, does not recognize the purported annexation of the Crimean Peninsula in Ukraine and considers Russia's action to be illegal.

Ukraine is a republic with a political system composed of three branches of government. In February 2014, the parliament voted to remove the former president from office after he fled the country. This followed three months of massive anti-government protests on Kyiv's central square (the Maidan) over his decision to postpone signing political and trade agreements with the European Union, in favor of closer ties with Russia, as well as his violent responses to the protests. In February, Russian armed forces intervened militarily in Crimea, which Russia occupied and purported to "annex" in March. Additional unrest and civilian deaths occurred when pro-Russian protesters in eastern and southern Ukraine seeking more autonomy from the national government, clashed with government forces. In May 2014, a new president was elected, signaling a strong democratic mandate for change in Ukraine.

The Russian occupation of Crimea has displaced more than 18,000 Crimeans and caused numerous human rights abuses. Russia has been accused of orchestrating attacks by Ukrainian separatists. Despite attempts to cease hostilities and establish peace through political dialog, the government's efforts have been largely rejected and the situation in Ukraine remains precarious. Violent clashes between Russia-backed separatists and Ukrainian forces continue in eastern regions of the country. In addition, Russian military forces continue to occupy the Crimean Peninsula, supply weapons and material support to the separatists, and are present on the eastern border of Ukraine.

In December 2015, the State Department issued a warning to U.S. citizens to defer all travel to Crimea and the eastern regions of Donetsk and Luhansk oblasts.

¹² See ISCR Case No. 08-09480 (App. Bd. Mar. 17, 2010); ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007). See also, Directive, Enclosure 3, ¶ E3.1.19 (the Federal Rules of Evidence shall serve as a guide in DOHA proceedings and technical evidentiary rules may be relaxed to permit the development of a full and complete record); F.R.E. 201; F.R.E. 1006.

Separatist groups have threatened, detained or kidnapped persons, including U.S. citizens, and violent clashes have caused over 9,000 deaths. There are reports of abuse against local populations that oppose separatist goals.

The United States has stood by Ukraine as Russia has sought to stymie its new democratic government. Since the start of the crisis, the United States has committed millions of dollars in financial aid and loan guarantees to Ukraine. U.S. advisors serve in almost a dozen Ukrainian ministries and localities to help deliver services, eliminate fraud and abuse, improve tax collection, and modernize Ukraine's institutions.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

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

Administrative judges are responsible for ensuring that an applicant receives fair notice of the security concerns at issue, has a reasonable opportunity to address those concerns, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

An individual who is granted access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information.

Security clearance decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B, Foreign Influence

The foreign influence security concern is explained at AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.

A person is not automatically disqualified from holding a security clearance because s/he has relatives or other contacts in a foreign country. Instead, in assessing a person's vulnerability to foreign influence, an administrative judge examines the nature of the relationship(s), as well as the foreign country (or countries) involved.¹³ A foreign country's intelligence-gathering history; human rights record; and other similarly pertinent factors are all relevant in assessing the foreign influence security concern.¹⁴

Applicant's connections to and limited contact with his former professional acquaintances who now live in Ukraine and Russia do not raise a foreign influence security concern. The nature of these relationships is casual. Even after taking into account the heightened security risk associated with the countries involved, Applicant's connections to and contact with these persons does not leave him vulnerable to foreign coercion. Accordingly, the portion of SOR 1.a and 1.b relating to these passing professional acquaintances is found in Applicant's favor.

Similarly, Applicant's extensive business-related foreign travel and attendance and presentations at international professional conferences do not raise a foreign influence security concern.¹⁵ Thus, SOR 1.c and 1.d are found in Applicant's favor.

¹³ AG ¶ 6; ISCR Case No. 12-05839 at 4 (App. Bd. July 11, 2013) ("in assessing whether there is a likelihood of vulnerability to [foreign] government coercion," the judge properly considered "the nature and strength of the family ties, the nature of [the foreign] government, its relationship with the United States and its human rights record.").

¹⁴ See *generally*, ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

¹⁵ ISCR Case No. 14-05013 (App. Bd. Sep. 27, 2016) (Guideline B is not implicated by mere attendance and presentations at international professional conferences); ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005) (foreign travel alone raises no independent security concern).

On the other hand, Applicant's relationship to his mother-in-law who is a citizen and resident of Ukraine, coupled with the facts administratively noticed, raise the foreign influence security concern. Although Applicant has infrequent contact with his mother-in-law, his wife clearly is close to and has frequent contact with her mother. In the security clearance context, this close relationship between Applicant's wife and her mother is imputed to Applicant.¹⁶ Accordingly, Applicant's relationship to his mother-in-law raises the disqualifying condition listed at AG ¶ 7(d).¹⁷

Once disqualifying conditions are established, the burden shifts to Applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. ISCR Case No. 15-01208 at 4 (citing Directive ¶ E3.1.15). A person with relatives in a foreign country, such as Ukraine, faces a *very heavy burden* of persuasion due to the significant security concerns raised by such circumstances.¹⁸ The adjudicative guidelines set forth a number of potential conditions that may mitigate the foreign influence security concern. I have considered all the applicable mitigating conditions, including the following:

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 . . . and the interests of the U.S.;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . 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;

AG ¶ 8(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; and

¹⁶ ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015) ("In-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.")

¹⁷ 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.

¹⁸ ISCR Case No. 14-02563 (App. Bd. Aug. 28, 2015). Although U.S. relations with the current Ukrainian government are good, foreign-backed forces with interests inimical to the United States operate freely in parts of Ukraine and pose a significant threat not only to Ukraine's sovereignty, but also to U.S. national security interests. In light of these circumstances, the serious security concerns that are raised by an individual with family members in a hostile foreign country are also present in the current case. Accordingly, Applicant's mitigation case must be examined through the lens of this heightened scrutiny.

AG ¶ 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of [foreign] contacts.

Applicant's contact with his mother-in-law is infrequent, but he did not rebut the presumption of a close relationship to her through his wife. Additionally, Applicant reported his foreign relatives, foreign travel, and other foreign connections and contacts during multiple security clearance investigations and to his security officer. However, in light of the matters accepted for administrative notice, AG ¶¶ 8(a), 8(c), and 8(e) have limited applicability. *Cf.* ISCR Case No. 13-01341 (App. Bd. Nov. 10, 2014).

Applicant presented a compelling case for mitigating the foreign influence concern under AG ¶ 8(b). After immigrating to the United States nearly 30 years ago, Applicant and his wife established significant ties to this country. Applicant built a successful business, while his wife has been employed by the same U.S. employer for decades. They recently purchased a home in the United States and financially helped one of his children also purchase a home in the United States. All their assets, totaling nearly a million dollars, are in the United States. Furthermore, Applicant has a long track record of properly handling and safeguarding sensitive U.S. information, and contributing to the national defense.

On the other hand, Department Counsel presented evidence that undercuts the application of AG ¶ 8(b). Notably, Applicant's wife regularly travels to Ukraine to visit her mother and other extended family members in Ukraine. Although Applicant's ties to his mother-in-law and his wife's travels to visit her have presumably been a constant issue that he has dutifully disclosed during the processing of his current and past security clearance applications, the country conditions in Ukraine have fundamentally changed since he was first granted a clearance. Of significant note is the State Department's current warning against travel to Ukraine, a country that is essentially in the midst of a civil war where separatist forces are backed by a hostile foreign power. This significant change puts this close familial connection in a different light, requiring a heightened level of scrutiny. *See, e.g.,* ISCR Case No. 05-02210 (App. Bd. Jan. 18, 2008) (judge erred in mitigation analysis by failing to consider the risk associated with applicant's parents frequent travels to their country of birth, a hostile foreign nation).

After weighing all the evidence and considering pertinent Appeal Board precedent, I find that Applicant did not mitigate the foreign influence security concern. *See generally,* ISCR Case No. 14-02563 at 5 (App. Bd. Aug. 28, 2015) (favorable decision reversed because, in part, applicant "communicates regularly with at least some of her Ukrainian relatives.")

At the same time, this adverse finding is *not* a comment on Applicant's patriotism or loyalty but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

Guideline L: Outside Activities

The involvement in outside activities security concern is explained at AG ¶ 36:

Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

The SOR alleges that Applicant's extensive business-related foreign travel and attendance and presentations at international professional conferences could pose a conflict of interest with his security obligations. Applicant engages in these activities to further his U.S. business. Obviously, any foreign travel that Applicant was required to take as part of a USG awarded contract, such as to Ukraine, do not implicate this concern.¹⁹ Instead, it is the business-related activity outside these USG contracts that allegedly raises a security concern under Guideline L.

Applicant fully reported these activities during the course of numerous security clearance investigations and to his security officer. He has not been employed, either on a compensated or volunteer basis, by any foreign government or entity. Thus, none of the disqualifying conditions listed at AG ¶ 37 apply. However, the Appeal Board has held that the disqualifying conditions are "illustrative only, not exhaustive and exclusive." ISCR Case No. 12-01698 at 4 (App. Bd. June 13, 2014). Therefore, Applicant's non-federal contract, business-related activities must be closely examined to determine whether it poses a potential conflict of interest with his security obligations, including whether such activities could create an increased risk of unauthorized disclosure of classified information (inadvertent or otherwise).

In the present case, Applicant's non-USG business comes from U.S. or U.K. commercial interests. None of his direct clients are foreign governments, militaries, intelligence agencies, or entities. None of the non-USG contract work relates to foreign defense, intelligence, or information systems. Applicant's work on these commercial contracts is directed by and paid for by his U.S. or U.K. clients, not a foreign government, representative, or entity.²⁰ He was not cautioned or advised by USG security officials that his foreign travel in support of non-federal contracts (or, entering into nondisclosure agreements) posed a potential conflict with his security obligations.²¹

¹⁹ The SOR alleged all of Applicant's business-related foreign travel, whether as a USG contractor or not, as a security concern under Guidelines B and L. *But see*, AG ¶¶ 8(d), 38(a).

²⁰ *Contrast with*, ISCR Case No. 00-0244 (App. Bd. Jan. 29, 2001) (applicant employed as a contractor by the embassy of foreign country, whose representatives had the power to fire him). *See also*, ISCR Case No. 02-22067 (App. Bd. Feb. 20, 2007) (affirming denial under Guideline L, in part, based on judge's finding that applicant "provided training on open source intelligence in foreign countries . . . and that in the course of doing so he had frequent contact with foreign representatives, such as military officials.")

²¹ *Cf.* ISCR Case No. 03-11096 (App. Bd. Feb. 3, 2005) ("acceptance of Department Counsel's argument could lead to the following untenable result: Any employee of a U.S. defense contractor would be

Moreover, the fact that Applicant is hired by a U.S. or U.K. company to translate in a commercial dispute or other commercial matter that may involve a Ukrainian or Russian commercial interests is not surprising considering he is a certified expert translator in these foreign languages. Also, Applicant entering into nondisclosure agreements with U.S. and U.K. companies does not raise a security concern, because the contract work does not involve security, defense, or intelligence matters. In short, the record is devoid of any suggestion that Applicant's procurement of or work on these non-USG commercial contracts raises a potential conflict of interest with his fiduciary responsibilities as a clearance holder.²²

As for Applicant's attendance and presentation at overseas professional conferences and his hiring of a handful of translators that he meets at these conferences, no record evidence was offered that these activities outside the country pose a conflict with his security obligations. Specifically, there is no record evidence that at some of the foreign locations these conferences were held that the attendees could be subjected to secret monitoring by representatives of a foreign power. Applicant does not maintain close ties to any of the persons he has hired at these conferences.²³ Applicant hired these persons as subcontractors on one-time projects, and there is no evidence that any of these persons were employed by a foreign government, military, intelligence agency, or entity. Although the "federal government need not wait until an applicant actually mishandles or fails to safeguard classified information before it can deny or revoke access to such information,"²⁴ the evidence in this case is insufficient to raise a security concern under Guideline L.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the non-exclusive factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and

ineligible to hold a security clearance if that employee worked on a contract or project connected with a military sale to a foreign country even if that military sale were approved and sanctioned by the U.S. government, *and even if there is no evidence that the employee was notified by appropriate federal officials (or authorized agents of such federal officials) that the employment in question is in conflict with the employee's security.*" (emphasis added).

²² *Contrast with*, ISCR Case No. 14-03112 at 4 (App. Bd. Nov. 3, 2015) ("the Judge's conclusion that Applicant having served in a foreign military and having held a foreign security clearance pose a danger of a conflict of interest is supportable under the facts of this case.")

²³ *Contrast with*, ISCR Case No. 10-07436 at 5 (App. Bd. Oct. 19, 2011) ("Evidence of foreign travel and of social interaction with foreign persons may be of limited significance, considered in and of itself. However, in Applicant's case, evidence of his meeting foreigners over the internet and engaging in foreign travel in order to further his relationships with them, all while holding a security clearance, viewed cumulatively, supports Department Counsel's argument that Applicant's personal interests may conflict with the protection of national security.")

²⁴ ISCR Case No. 10-09511 at 3 (App. Bd. Nov. 17, 2011).

highlight some additional whole-person factors. Applicant was candid and cooperative throughout the current and past security clearance processing. He was previously granted a security clearance (before recent problems in Ukraine occurred). He has handled his security obligations without issue. Notwithstanding this and other favorable record evidence, Applicant failed to meet his burden of persuasion in mitigating the security concern raised by his close relationship to his relative who is a citizen and resident of Ukraine.

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 (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant ²⁵
Subparagraphs 1.b – 1.d:	For Applicant
Paragraph 2, Guideline L (Outside Activities):	FOR Applicant
Subparagraphs 2.a:	For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

²⁵ This adverse finding only covers Applicant's relationship, through his wife, to his mother-in-law. It does not extend to the second part of SOR 1.a, alleging a security concern based on Applicant's connection to and contact with a former professional acquaintance who is a citizen and resident of Ukraine.