



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



In the matter of:)
)
) ISCR Case No. 15-01929
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Kristofer Hofstra, Esq.

09/30/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence and Guideline C, foreign preference. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On October 28, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 12, 2015, and requested a hearing before an administrative judge. On March 2, 2016, the case was assigned to me. On March 4, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 30, 2016. I convened the hearing as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. DOHA received the transcript (Tr.) on April 7, 2016.

Procedural Ruling

Administrative Notice

I took administrative notice of facts concerning the country of Russia. Department Counsel provided references to supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.¹

Administrative or official notice is the appropriate type of notice used for administrative proceedings.² Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports.³

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations with explanations.⁴ Those admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 29 years old. In 1998, he came to the United States with his parents when he was 11 years old. He became a naturalized U.S. citizen in September 2004. He obtained a U.S. passport in March 2005. He completed all his education in this country to include high school, undergraduate (bachelor's), and graduate (master's) studies. He is single, never married and has no children. He is currently an engineer for a defense contractor who he has worked for since 2012.⁵

¹ The Government's request and the supporting background documents were marked as hearing exhibit (HE) I.

² 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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986).

³ See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

⁴ At hearing, Department Counsel moved to withdraw SOR ¶¶ 2.a – 2.c. The motion was granted. My Formal Findings, *supra*, will indicate that those three allegations were withdrawn. Tr. At 8-9.

⁵ Tr. at 38; GE 1-2.

The SOR alleges that Applicant exercised his Russian citizenship by applying for and being issued a Russian passport in 2007 after becoming a U.S. citizen in 2004; possessed a Russian passport that he renewed in 2012; and used his Russian passport when he traveled to Russia in 2009 in lieu of his U.S. passport. The SOR also alleges his maternal and paternal grandparents, two aunts, and an uncle are all residents and citizens of Russia.

Applicant presented documentation showing that he renounced his Russian citizenship and that citizenship was terminated in 2015. Before his Russian citizenship was terminated, Applicant explained that he renewed his Russian passport in 2007 because it was easier to travel to Russia to visit relatives and there was no good reason not to use it then. He used his Russian passport to travel to Russia in 2008 for ease of travel and convenience. After starting work at his current job and understanding the ramifications of having Russian citizenship, he decided to renounce that citizenship in 2013. In order to do so, he needed a current Russian passport. This is the reason he renewed his Russian passport in 2012. It allowed him to renounce his citizenship that resulted in termination in 2015. He sent his Russian passport along with his written intent to renounce his Russian citizenship to the Russian consulate. This was witnessed by a security representative from his company.⁶

Applicant's relatives who are Russian citizens and residents (his testimony revealed that his paternal grandparents are residents of Georgia) include his paternal and maternal grandparents, two aunts and an uncle. His grandfathers are in their 80s and one grandmother is in her 70s, while the other is in her mid-60s. One aunt is 45 years old and Applicant's uncle is in his 50s. He does not know the age of his other aunt. He has not visited these relatives since his last trip to Russia in 2008. None have any government or military affiliation. He has minimal contact with all his grandparents, aunts, and uncle. That contact is limited to an annual birthday phone call. He does not receive or provide any financial support to any of these relatives.⁷

Applicant owns no property or any other assets in Russia. He owns his own home and two cars here in the United States. His parents are citizens and residents of the United States.⁸

Russia has a highly centralized, weak multi-party political system dominated by the president. Russia has significant human rights problems, marked by restrictions on civil liberties, discrimination, denial of due process, forced confessions, torture, other prisoner mistreatment, and the government's failure to prosecute officials who commit serious violations. Government officials also engage in electronic surveillance without proper authorization.

⁶ Tr. 19-22; AE A.

⁷ Tr. at 26-31; GE 2.

⁸ Tr. at 32-33; GE 2.

Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advance weapons technologies beneficial to Russia's military modernization and economic development. Russia is one of the most capable and persistent intelligence threats and aggressive practitioner of economic espionage against the United States. Russia's intelligence services as well as private companies and other entities frequently seek to exploit Russian citizens or persons with family ties to Russia who can use their insider access to corporate networks to steal secrets. They also have offered financial inducements to U.S. government officials and citizens to encourage them to compromise classified information. Russia's attempts to collect U.S. technological and economic information represent a growing and persistent threat to U.S. security.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of

the possible risk that an 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

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

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. 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 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; and

(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.

The mere possession of close family ties with a family member living in Russia is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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 or inducement. 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, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship of Russia with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Russia do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Russia who might be coerced by governmental entities.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."⁹ Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives from Russia seek or have sought classified or economic information from or through Applicant, or his relatives living in Russia, it is not possible to rule out such a possibility in the future. Department Counsel produced substantial evidence to raise the issue of potential foreign influence.

AG ¶¶ 7(a) and 7(b) apply because of Applicant's relationships with his relatives who live in Russia. Applicant communicates with these Russian relatives on a sporadic basis. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Applicant has not attempted to rebut this presumption. Given Russia's aggressive intelligence approach toward the United States, Applicant's relationships with his relatives living in that country are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion."

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

(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

⁹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

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

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶ 8(a) partially applies. Applicant's in-laws are not in government positions and do not have affiliations with the Russian government. Applicant's parents reside in the United States and he has limited contact with his Russian grandparents, aunts and uncle. It is unlikely that Applicant would be placed in a position of having to choose between his Russian relatives' interests and those of the United States. Because the contact is with relatives, the contact is presumed not casual. AG ¶ 8(c) does not apply.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He has resided in this country since he was 11 years old, he became a citizen in 2004, and has attended high school, college, and graduate school in this country. He owns a home and two cars here. The evidence supports that Applicant has longstanding loyalties toward the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

Guideline C, Foreign Preference

The concern under this guideline is set out in AG ¶ 9:

"When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

The security concern under this guideline is not limited to countries hostile to the United States. Applicant's possession and use of a Russian passport after becoming a U.S. citizen establishes AG ¶ 10(a)(1).

AG ¶ 11 provides conditions that could mitigate security concerns:

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant renounced his citizenship and surrendered his Russian passport. In 2015, his Russian citizenship was terminated. Both mitigating conditions apply.

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.

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance at this time. I considered the ties he established in this country, thereby demonstrating his longstanding loyalty to this country and his termination of Russian citizenship. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant mitigated the security concerns arising under Guideline B, foreign influence, and Guideline C, foreign preference.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a: - 2.c:	Withdrawn
Subparagraphs 2.d: - 2.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge