



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03252

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

August 15, 2016

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 17, 2012. (Government Exhibit 1.) On December 6, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an Answer to the SOR on December 18, 2015, and requested a hearing. Department Counsel was ready to proceed on March 2, 2016. The case was assigned to me on March 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 18, 2016. The hearing was held on April 18, 2016. The Government submitted four exhibits, which were admitted without objection. (Government Exhibits 1 through 4.) Applicant testified, and called one additional witness. The transcript (Tr.) was received on April 26, 2016. Based upon a

review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Russia (Government Exhibit 3), and Ukraine (Government Exhibit 4). (Tr. 15-17.) Applicant did not object. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 44, married, and has two children. He has a Ph.D. in physics, and has worked for his current employer, a defense contractor, since 2007. He has not previously been granted a security clearance. Applicant admitted allegations 1.a, 1.c, 1.d, and 1.e in the SOR. These admissions are findings of fact. He denied allegation 1.b.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could make him vulnerable to pressure or coercion.

Applicant was born in 1971 in Ukraine, which was then part of the Soviet Union. He was attending a prestigious university (University) in Russia at the time the Soviet Union collapsed in 1991. At that time, in order to continue receiving his free education, he elected to have Russian citizenship, instead of Ukrainian. He received a doctorate in 1996. Unable to find a job in Russia, Applicant was offered a post-doctoral fellowship at a major American university, and moved to the United States in 1997. He became an American citizen in 2012. (Tr. 21-24; Government Exhibit 1 at Sections 9, 12.)

Applicant met his wife in Russia. They were married in 2002. She also became a U.S. citizen in 2012. They have two native-born American children. (Tr. 24-26; Government Exhibit 1 at Sections 17, 18.)

1.a. As stated, Applicant was born in Ukraine. His mother is deceased. His father, who is a retired college instructor, is 82 and in poor health. The father lives in Ukraine with Applicant's sister, a situation that is further discussed below. He speaks with his father by telephone about twice per month. Applicant does not provide regular financial assistance to his father. (Answer; Tr. 27-30.)

1.b. Applicant denied this allegation, which states that his sister is a citizen of Russia residing in Austria. Applicant stated that his sister has renounced her Russian citizenship, resuming that of Ukraine, her birth country. In addition, she has returned to Ukraine and lives with Applicant's father. Applicant and his sister are currently estranged. They have not spoken for more than a year. In accordance with the facts discussed above, Subparagraph 1.b of the SOR was amended on motion of Department Counsel, with the consent of Applicant, pursuant to Directive, ¶ E3.1.17. The allegation now reads, "Your sister is a citizen and resident of Ukraine." (Tr. 30-36.)

1.c and 1.d. Applicant's wife was born in Russia. Her parents are still alive and live in an industrial city in Russia. Applicant's father-in-law is employed by the Russian government at a state-run advanced scientific research institution. He has worked for the institution for about 30 years in the supply field. Applicant's mother-in-law has a chronic illness. Applicant sends approximately \$200 per month to her to help purchase medication. Applicant's wife has frequent contact with her parents. Applicant speaks to them about twice per year. (Tr. 36-42.)

1.e. Applicant continues to have frequent contact with several of his professors from the University in Russia where he received his doctorate in physics, including his faculty advisor. These Russian educators are part of a collaborative effort between American and Russian researchers. This project, which includes annual conferences, is funded by the National Science Foundation (NSF), an independent Federal agency.¹ The field in which Applicant now works is unrelated to the research being conducted by his former colleagues under NSF auspices. Applicant and the Russian educators get together socially whenever they are in the United States to attend conferences in the city where Applicant lives. Applicant is not part of these conferences. The last time he had a social interaction with these professors was in approximately March 2016. (Tr. 19-21, 43.)

Applicant testified that he feels no sense of loyalty to either Ukraine or Russia. He has substantial assets in the United States, including a house and investments that total approximately \$500,000. Applicant has no financial interests in either Ukraine or Russia. When he travels overseas Applicant uses his American passport. (Tr. 45-47.)

One witness testified for Applicant. He is the founder, president and CEO of Applicant's employer. He has known Applicant since 2001, when he hired Applicant to work with him at a United States government research institution. Applicant has worked for him continually since that time. In 2007 the witness hired Applicant to work at his company. He believes Applicant to be a person of the highest integrity. He gives Applicant his highest recommendation. (Tr. 51-58.)

¹See National Science Foundation, *About the National Science Foundation*, <https://www.nsf.gov/about/> (accessed August 11, 2016.)

Applicant has familial and professional connections with both Ukraine and Russia. It is therefore appropriate to discuss current conditions in both countries:

Turning first to Ukraine. Ukraine and Russia are currently involved in a low-level military conflict involving both the Crimean peninsula and areas in eastern Ukraine that border Russia. The security situation in the conflict areas is uncertain, and American citizens are warned against travel to those areas. It is noted that Applicant's father and sister do not live in those areas. (Government Exhibit 4.)

Russia continues to be one of the leading intelligence threats to US interests, along with China. Intelligence concerns have been expressed that Russia may target for recruitment Russian immigrants with advanced technical skills who work for American high-tech companies. Russia has a history of intense intelligence activities directed against the United States. In addition, Russia has significant and continuing human rights problems. (Government Exhibit 3.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's circumstances and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows under 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. 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.

Applicant has extensive family and professional connections to Ukraine and Russia. Accordingly, this requires an analysis under the heightened risk standard. The following disqualifying conditions under AG ¶ 7 apply to this case:

- (a) contact with a foreign family member, business or professional associate who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant has not provided sufficient evidence to show that the following mitigating conditions under AG ¶ 8 fully overcome the security concerns of this case, given his particular background:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority.

Turning first to Applicant's father and sister. While Ukraine has a current conflict with Russia, no evidence was introduced that Ukraine has an active intelligence-gathering effort in the United States. Applicant's relatives do not live in the conflict areas

of Ukraine, and neither is connected with the Ukrainian government. Subparagraphs 1.a and 1.b are found for Applicant.

Applicant is an intelligent and accomplished American citizen. What is of concern, and what cannot be mitigated, are Applicant's family and professional connections to Russia. In a nutshell, his contacts are too extensive, and the possible mitigation too meager at this point in time, to grant him a clearance. It must be emphasized that there is no allegation or suspicion that Applicant has acted in any way that is detrimental to the national interest of the United States.

With regard to his father-in-law. This person has had a 30 year career at a major scientific research institution in Russia. He has worked for this institution since before the Soviet Union collapsed. Applicant's wife talks to her father and mother on a regular basis, and Applicant provides monetary support.

In addition, Applicant has a close and continuing personal relationship with several academics from a prestigious University in Russia. These people come to the United States on a fairly regular basis, as part of a collaborative research effort funded by the NSF. When they are here Applicant meets with them socially, the last time being earlier this year. AG ¶ 8(d) does not apply to his contacts with them because, while they may be here at the invitation of the United States, his contact with them is not "on U.S. Government business."

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 situation and all the circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. My Guideline B analysis is applicable to the whole-person analysis as well. At this point in time, Applicant simply has too many contacts of concern with Russia. He did not present sufficient evidence in

mitigation. Accordingly, I find that there is considerable “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has not mitigated the security significance of his foreign connections. Based on an evaluation of all the available evidence, I find against Applicant as to Paragraph 1 of the SOR. He is not currently eligible for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Subparagraphs 1.d through 1.e:	Against Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge