



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-03730  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: Christopher Graham, Esq.

10/28/2016  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence, and Guideline C, foreign preference. Affluence concerns under Guideline F, financial considerations, were not established. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

On December 1, 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, Guideline C, foreign preference, and Guideline F, financial considerations. The DOD CAF 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 September 1, 2006.

Applicant answered the SOR on January 19, 2016, and requested a hearing before an administrative judge. On June 1, 2016, the case was assigned to me. On May 11, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 2, 2016. I convened the hearing as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. The Government's exhibit list was marked as Hearing Exhibit (HE) I. Applicant testified and submitted Applicant's Exhibits (AE) A1 to A6, B1 to B11, and C through F, which were admitted without objection. Applicant's exhibit list was marked as HE III. DOHA received the transcript (Tr.) on June 13, 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.<sup>1</sup>

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

## **Findings of Fact**

In Applicant's answer (Ans.) to the SOR, he admitted all the allegations with explanations, except for SOR ¶¶ 1.e and 1.f, which he denied. 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 60 years old. He was born in Russia. He completed all his education in Russia to include high school, undergraduate, and graduate (master's) studies. In 1999, he came to the United States when he was sponsored for a job from a U.S.-based private sector company. He worked for that company for twelve years until the principal owner sold it and Applicant sought employment with his current government contractor employer. He became a naturalized U.S. citizen in March 2011. He obtained

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<sup>1</sup> The Government's request and the supporting background documents were marked as HE II.

<sup>2</sup> 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).

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

a U.S. passport in April 2011. He is married (33 years) and has one adult son. He is currently an engineer for a defense contractor who he has worked for since 2012.<sup>4</sup>

The SOR alleges his spouse and son are dual citizens of the United States and Russia; that his two sisters and in-laws are all residents and citizens of Russia; that he maintains close and personal relationships with individuals who are citizens and residents of Russia; and that he owns property in Russia valued at approximately \$50,000. The SOR also alleges that Applicant exercised his Russian citizenship by obtaining a Russian passport in 2012. Finally, the SOR alleges in 2002 he received a \$50,000 wire transfer from his father-in-law in Russia.

Applicant's spouse and son moved to the United States with him in 1999. They all became U.S. citizens in 2011. His wife and son have Russian citizenship by birth. They did not delay seeking their U.S. citizenship, but rather the process was held up for years because of the 9-11 attacks, which caused a tremendous backlog in processing resident alien and citizenship applications. His spouse lives with Applicant in their U.S.-located residence. She is employed locally. Applicant's son went to high school and college in the United States. He is married, lives apart from his parents, and works in this country.<sup>5</sup>

Applicant's two sisters are both retired (a school nurse and an engineer). He has quarterly contact with them through telephone calls or video chats. Neither knows what he does in his current job. His in-laws are elderly and not in good health. They are both retired. He occasionally has telephonic contact with them just to say hello. Applicant's family stayed with them when he last visited Russia in 2008. They visited Applicant in the United States about five years ago. None have any government or military affiliation. He does not receive or provide any financial support to any of these relatives.<sup>6</sup>

Applicant credibly testified that he stopped communicating with his non-family Russian friends when he took his current job in 2012. The friends were former neighbors and acquaintances from when he resided in Russia before 1999. He remained in contact with them through emails and the telephone when he came to the United States, but he completely ceased that contact once he began his current position. He knows it was rude, but believes he had to do it.<sup>7</sup>

Applicant documented (see contract, settlement and warrant) that he sold the Russian property that was the subject of SOR ¶ 1.f in 2002. He received approximately

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<sup>4</sup> Tr. at 22-24, 26, 28-29; Ans.; GE 1-2.

<sup>5</sup> Tr. at 28-29, 39, 55; Ans.

<sup>6</sup> Tr. at 29-30, 32, 45-50; Ans.

<sup>7</sup> Tr. at 31, 50, 57; Ans.

\$50,000 from the proceeds of the sale. He no longer has any property located in Russia.<sup>8</sup>

Applicant manifested his intent to renounce his Russian citizenship by sending a letter to his employer's security office in June 2012, which stated his intent to renounce. He was advised by the security specialist not to go to the Russian Embassy to renounce his citizenship. He followed that advice. In August 2012, he destroyed his Russian passport in the presence of security personnel and acknowledged that he would not apply for or obtain a foreign passport. His action was documented in a letter signed by him and the witnessing security specialist. Since becoming a U.S. citizen, he has never voted in any Russian elections. He believes he worked long enough in Russia to qualify for a Government pension, but he will never attempt to collect it because he is a citizen of this country now. Applicant explained that he renewed his Russian passport in January 2012, before he started working for his current employer, because it was required in order to travel to Russia to visit relatives. He never used this passport after it was renewed. He never intends to return to Russia.<sup>9</sup>

Since selling his condo in 2002, Applicant owns no property or any other assets in Russia. He owns his home here in the United States (purchased for \$245,800 in 2003), he has a 401(K) retirement plan worth about \$30,000, and he has a pension from his former private sector employer worth about \$165,000. His and his wife's combined annual income is approximately \$100,000.<sup>10</sup>

Applicant presented evidence of various training he received from his current employer in such areas as security, cyber awareness, trafficking in persons' awareness, privacy act training, including protecting personal identifiable information, and information assurance awareness. He also offered the recommendations of three current colleagues and his former supervisor/business owner. All four are scientists with Ph.Ds. They all recommend that Applicant receive a security clearance stating that he is loyal, honest, trustworthy, dedicated, a man of integrity, and an excellent employee.<sup>11</sup>

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.

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<sup>8</sup> Tr. at 32, 52, 59; Ans.; AE A1-A3.

<sup>9</sup> Tr. 27, 35-38, 51-52; Ans.; AE A4-A5.

<sup>10</sup> Tr. at 32-34, 52, 57-59; Ans.; AE A6.

<sup>11</sup> AE B2-B11, C-F.

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'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;

(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.

(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; and

(e) 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.

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. Applicant's 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."<sup>12</sup> 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. They do not apply to Applicant's Russian friends because he ceased his relationship with them. Applicant communicates with his 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."

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<sup>12</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

AG ¶ 7(d) does not apply to his wife because although she is a Russian citizen by birth, she is a naturalized U.S. citizen who lives and works here. There is no heightened risk associated with living with his wife of 33 years. AG ¶ 7(d) also does not apply to Applicant's son because he does not live with Applicant and his relationship to Applicant also does not create a heightened risk of foreign exploitation because he resides and works in the United States and is a U.S. citizen.

AG ¶ 7(e) does not apply because Applicant documented the 2002 sale of his financial/property interest in Russia. He no longer owns any property or assets in Russia.

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 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 sisters and in-laws are not in government positions and do not have affiliations with the Russian government. Applicant has limited contact with his Russian sisters and in-laws. 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 to be 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 1999 and he became a citizen in 2011, along with his wife and son. He owns a home and substantial retirement funds here. He has a track record of excellent service to his employers. 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.

Applicant's possession 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 expressed his willingness to renounce his citizenship before a witness and destroyed his Russian passport. Both mitigating conditions apply.

## **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern for financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income.

Applicant credibly explained that the \$50,000 he received in 2002 was from the sale of his Russian condo. He presented documentation that supported the sale. He used the proceeds to help purchase his U.S. home in 2003. He fully explained the receipt of these funds showing a legitimate real estate transaction. He owns no other property in Russia. AG ¶ 18(h) does not 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, his termination of Russian citizenship, and his legitimate real estate transaction. 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. Affluence concerns under Guideline F were not established.

## **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: Subparagraphs 1.a: - 1.f:	FOR APPLICANT For Applicant
Paragraph 2, Guideline C: Subparagraph 2.a:	FOR APPLICANT For Applicant
Paragraph 3, Guideline F: Subparagraph 3.a:	FOR APPLICANT 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.

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Robert E. Coacher  
Administrative Judge