



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04101

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

02/24/2017

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his access to classified information. Applicant mitigated security concerns raised by his relationship with his father and his family who are citizens and residents of Russia. Clearance is granted.

**Statement of the Case**

On February 17, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing. I issued an amended pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses. The parties complied with the order. At the hearing, which proceeded as scheduled on July 14, 2016, I admitted Government's Exhibits (GE) 1 and 2 and Hearing Exhibits I – III, without objection. The Defense Office of Hearing and Appeals (DOHA) received the transcript (Tr.) on July 22, 2016.

## **Procedural Issues**

### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about the Russia, specifically its human rights record with its citizens and residents as well as the country's active espionage efforts targeting U.S. interests. Applicant did not object to the request, and it was granted. The written summary, along with its attachments, is appended to the record as HE III.<sup>2</sup>

## **Findings of Fact**

Applicant, 28, received an employment offer from a federal contractor in 2016, after completing a summer internship. Applicant completed a security clearance application in August 2014, disclosing that his father is a citizen and resident of Russia. In his October 2014 interview, Applicant also disclosed that his father's wife and their two children are also citizens and residents of Russia.<sup>3</sup>

Applicant was born in Uzbekistan. His parents divorced when he was one year old. Applicant and his mother remained in Uzbekistan. Applicant's father returned to his native Russia. In 2004, Applicant's mother married a U.S. citizen. Shortly thereafter Applicant, who was 14 years old, and his mother immigrated to the United States. Applicant became a U.S. naturalized citizen in 2011. Because of the influence of his step-father, a scientist whom Applicant cites as his father-figure, Applicant has chosen to pursue a career in the Science Technology Engineering and Mathematics (STEM) field. He is not married, but has been in a relationship with his girlfriend since high school. They have lived together since 2007, and are parents to three children ages 8, 3, and 1 year old.<sup>4</sup>

Applicant's father continues to live in Russia with his family. In the 13 years before he immigrated to the United States, Applicant saw his father only three times. In 2006, when he was 17, Applicant traveled to Russia to visit his father. He returned to Russia in 2010 with his girlfriend and their first child so that Applicant could introduce them to his paternal grandmother, with whom he remained close, and his father. They

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<sup>2</sup> Tr. 18.

<sup>3</sup> Tr. 16-18, 22; GE 1.

<sup>4</sup> Tr. 16-20.

spent the majority of the trip in his grandmother's village. Applicant traveled to Russia alone in 2014 to commemorate the first anniversary of his paternal grandmother's death. Applicant took his most recent trip to Russia in 2015 with his girlfriend and two children. Before the trip, Applicant, who was in an internship with a federal contractor, sought guidance from his security office to ensure that he was in compliance with security guidelines.<sup>5</sup>

During each of these trips, Applicant spent some time with his father; however, the majority of the trips were spent visiting tourist attractions. Although Applicant has met his father's wife and their two children, ages 6 and 3, he does not maintain ongoing contact with them. Applicant speaks to his father a few times a year on birthdays and holidays. Applicant's father has never traveled to the United States and at the time of the hearing, Applicant had no plans to return to Russia. His father is an entrepreneur. Applicant believes that his father imports clothing, but does not know any other details of his father's business. Applicant has not shared any details of his own professional pursuits with his father.<sup>6</sup>

Having earned his graduate degree in May 2016, Applicant and his girlfriend, who provides the family's primary source of income, do not have significant assets. However, they are very active in their university community as well as their oldest son's school. Applicant and his family also spend time with his mother and step-father, who are very involved in their grandchildren's lives.<sup>7</sup>

## **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 to be 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, administrative judges apply the guidelines 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

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<sup>5</sup> Tr. 19, 24, 32-33.

<sup>6</sup> Tr. 20, 26, 28-29.

<sup>7</sup> Tr. 12-23, 29-30, 34, 43.

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.

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.” The applicant 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 the 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.

Section 7 of EO 10865 provides that adverse 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**

### **Foreign Influence**

“[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or 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.”<sup>8</sup> Applicant’s father, his wife, and their two young children are residents and citizens of Russia, a country with 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.<sup>9</sup>

Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advanced 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 persons with family ties to Russia, who can use their insider access to

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<sup>8</sup> AG ¶ 6.

<sup>9</sup> HE III.

corporate networks to steal secrets.<sup>10</sup> As a result, Applicant's relationships with his Russian relatives create a heightened risk of foreign exploitation, inducement, manipulation, and coercion or potentially raise a conflict of interest for Applicant.<sup>11</sup>

However, Applicant presented sufficient information to mitigate the foreign influence concerns raised by these relationships. Even with the infrequent contact, Applicant's relationships with his father, step-mother, and young half-siblings cannot be considered casual. However, it does not appear that Applicant is bound to his Russian relatives by strong bonds of affection or obligation. Applicant's relationship with his father is better characterized as respectful, but not close or intimate. Applicant does not maintain any contact with his father's wife or his two young half-sisters. Furthermore, Applicant is firmly rooted to the United States by the presence of his nuclear family as well as his girlfriend and their three children. When the strength of Applicant's U.S. ties are weighed against his relationships with his Russian relatives, Applicant's sense of loyalty and obligation to the latter is so minimal that he can be respected to resolve any conflict of interests in favor of U.S. interest.<sup>12</sup>

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant does not have divided loyalties between the United States and Russia. Aside from the presence of his father and his family in Russia, Applicant has no independent ties or affinity toward that country. Furthermore, during his internship with a federal contractor, Applicant showed an understanding of the importance of the security concerns and procedures related to having foreign contacts and travelling internationally. His actions to comply with security policy before becoming a clearance holder demonstrates a high level of security consciousness that suggests he will properly handle and safeguard classified information in the future.

### **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, Foreign Influence:

FOR APPLICANT

Subparagraphs 1.a - 1.c:

For Applicant

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<sup>10</sup> HE III.

<sup>11</sup> AG ¶ 7(a) – (b).

<sup>12</sup> AG ¶ 8(b).

## **Conclusion**

In light of all of the circumstances, 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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Nichole L. Noel  
Administrative Judge