



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04442

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant; Alan V. Edmunds, Esq.

10/25/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 25, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 11, 2015, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May

20, 2016, scheduling the hearing for June 22, 2016. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on July 5, 2016.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through N, which were admitted without objection.

Request for Administrative Notice

Department Counsel and Applicant both requested that I take administrative notice of certain facts about Belarus. The requests were not admitted in evidence but were included in the record as Hearing Exhibits (HE) I and II. Neither side objected, and I have taken administrative notice of the facts contained in HE I and II. The facts administratively noticed are summarized in the Findings of Fact, below.

Findings of Fact

Applicant is a 33-year-old engineer employed by a defense contractor. He has worked for his current employer since 2014. He is applying for a security clearance for the first time. He has a bachelor's degree. He is married with a child.¹

Applicant was born in Belarus to Belarusian parents. He came to the United States in 2003. He attended college here, and he became a U.S. citizen in 2012. He is still considered a Belarusian citizen by the Belarusian government, but he destroyed his Belarusian passport in the presence of his company's facility security officer. Applicant traveled to Belarus on his U.S. passport with a visa. He is willing to renounce his Belarusian citizenship, but it is a long process that may create more issues than it resolves.²

Applicant's wife is also from Belarus. They have been married since 2006. She became a U.S. citizen in 2015. She is still considered a dual U.S. and Belarusian citizen. Her brother lives in the United States.³

Applicant's parents are Belarusian citizens. They are divorced. Applicant's father was approved to immigrate to the United States. He was scheduled to arrive in the United States in August 2016, where he will remain as a permanent resident.

¹ Tr. at 17, 24; GE 1, 2; AE E.

² Tr. at 28-29, 37; GE 1, 2; AE D, J, L.

³ Tr. at 17, 29, 34-35; Applicant's response to SOR; GE 1, 2.

Applicant's mother would like to immigrate to the United States, but she has not yet been approved to do so.⁴

Applicant's sister married an Israeli citizen and lives in Israel. She is a dual Belarusian and Israeli citizen. Applicant's uncle, cousin, and parents-in-law are citizens and residents of Belarus. He has maintained social contact with a few individuals who are citizens and residents of Belarus. He had periodic contact with a Russian citizen who was residing in the United States, but Applicant lost contact with him after Applicant moved to a different state. There is no indication that Applicant's family members and associates have direct ties to the Belarusian or Israeli governments.⁵

Applicant credibly stated that his allegiance lies with the United States. He came to the United States for its "opportunities, freedom of religion, speech, [and] economic freedoms." He has a good job, and his wife also works. They have about \$140,000 in savings and retirement accounts. He has no intention to return to Belarus to live. He stated that he would report any attempt to use his family in Belarus against him.⁶

Applicant submitted numerous documents and letters attesting to his excellent job performance. He is praised for his energy, enthusiasm, leadership, reliability, trustworthiness, loyalty, ethical values, honesty, work ethic, professionalism, dedication, and integrity.⁷

Belarus

Belarus declared its sovereignty in July 1990 and its independence from the Soviet Union in August 1991. The United States recognized Belarus as an independent state in December 1991. Belarus purports to be a democratic republic; however, it is in fact an autocratic regime ruled by Alyaksandr Lukashenka, who came to power in July 1994. The State Department reports that, since 1994, "Lukashenka has consolidated power steadily in the executive branch through authoritarian means, destroying checks and balances and thereby dominating all branches of government."

Under its constitution, citizens of Belarus have the right to vote, freedom of religion, and freedom of travel. The State Department's Background Note on Belarus reports in detail how the Belarusian authorities under Lukashenka have severely curtailed and infringed upon its citizens' ability to exercise all these constitutional rights, as well as workers' rights, which also are specifically provided for by the Belarusian Constitution.

⁴ Tr. at 18-21; Applicant's response to SOR; GE1, 2; AE C, J.

⁵ Tr. at 21-24, 32-38; Applicant's response to SOR; GE 1.

⁶ Tr. at 18, 24, 28; GE 1; AE J.

⁷ AE F-I, M.

Elections in 2006, 2010, 2012, and 2015 failed to meet international standards. Government restrictions on basic freedoms are also common throughout non-election periods. Belarusian authorities commit frequent, serious abuses in a system bereft of checks and balances. Belarus has made sales or delivery of weapons or weapons-related technologies to states of concern, including state sponsors of terrorism such as North Korea, Syria, and Iran.

Naturalized U.S. citizens originally from Belarus may not automatically lose Belarusian citizenship upon naturalization and in the majority of cases retain Belarusian citizenship unless it is specifically renounced.

Belarusian security personnel may place foreigners under surveillance, including monitoring their hotel rooms, telephones, and fax machines, and searching their personal possessions in hotel rooms. American citizens have, in the past, been detained and jailed in Belarus. While incarcerated, Americans may be subject to abuse and beatings, and denied regular access to American Embassy officials.

According to the Department of Justice, there have been several recent criminal cases concerning international cybercrimes and arms exportation related to Belarus. In January 2016, a Belarusian national was extradited to the United States to face charges for an international cybercrime ring that netted \$71 million by infecting computers with “scareware” and selling rogue antivirus software. In December 2015, a man was charged in connection with his efforts to purchase and export 89 sniper rifles from the United States to Belarus. In August 2015, two Belarusian citizens were charged for their participation in an international criminal conspiracy to steal banking and other credentials from infected computers.

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 classified information will be resolved in favor of national security.”

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

Guideline B, Foreign Influence

The security concern for foreign influence is set out in 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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; 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's family members are citizens and residents of Belarus. Belarus is an autocratic regime with significant human rights problems. It has made sales or delivery of weapons or weapons-related technologies to states of concern, including state sponsors of terrorism such as North Korea, Syria, and Iran. Belarusian security personnel may place foreigners under surveillance. There have been several recent criminal cases concerning international cybercrimes and arms exportation related to Belarus. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), and 7(d) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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.; and
- (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.

I considered the totality of Applicant's ties to Belarus, but they are outweighed by his deep and longstanding relationships and loyalties in the United States. His wife, child, and brother-in-law are in the United States. His father was approved to immigrate to the United States, and he is likely living here by now. His mother is seeking to immigrate to the United States. There is no indication that Applicant's family members and associates have direct ties to the Belarusian or Israeli governments. He has a good job and about \$140,000 in savings and retirement accounts. He credibly stated that his allegiance lies with the United States and that he would report any attempt to use his family in Belarus against him.

I find it unlikely that Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Belarusian government. There is no conflict of interest because Applicant can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

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 relevant 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. I have incorporated my comments under Guideline B in my whole-person analysis. I considered Applicant's strong character evidence. His ties to Belarus are far outweighed by his deep and longstanding relationships and loyalties in the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

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
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Subparagraphs 1.a-1.g:	For Applicant
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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.

Edward W. Loughran
Administrative Judge