



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-05264
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: Rosario Mario F. Rizzo, Esq.

05/31/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 5, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence).¹ 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, and she requested a hearing before an administrative judge. The case was assigned to me on January 25, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the

¹ The caption was amended to reflect Applicant's surname following her marriage and name change.

hearing for March 8, 2017. I convened the hearing as scheduled. Government Exhibits (GE) 1-2 and Administrative Notice (AN) I were admitted without objection. Applicant and her husband testified, and she presented one document, which was admitted into evidence as Applicant's Exhibit (AE) A, without objection. I received the hearing transcript (Tr.) on March 27, 2017.

Findings of Fact

The SOR alleges security concerns based on Applicant's contacts with her father-in-law, stepmother-in-law, and extended family members in Russia. Applicant admitted these contacts and provided further explanation in her response to the SOR.² After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 27 years old, and she is a U.S. citizen by birth. She attained a bachelor's degree in May 2012 and a master's degree in May 2014. Since July 2014, she has been employed full time by a DOD contractor. Applicant's parents and sister are citizens of and reside in the United States.³

Applicant met her husband in September 2008, and they began dating in December 2009. In August 2015, they married. Applicant's husband was born in Russia and is a Russian citizen by birth. He moved to the United States with his family in about 1994, and he has lived in the United States ever since. He became a naturalized U.S. citizen in 2006, and he retains his Russian citizenship. He is an only child.⁴

Applicant's father-in-law is a citizen of and resides in Russia. Decades ago, he completed two years of compulsory military service in the Soviet military. He lived in the United States in the 1990s and returned to Russia when his work visa expired. He speaks Russian and English. He is employed as a driver for an executive of a business entity controlled by the Russian government. Applicant has contact with her father-in-law through social media – exchanging holiday greetings, photos of special events, and “normal family things.” She and her husband invited her father-in-law and stepmother-in-law to their August 2015 wedding; however, they did not attend. Applicant's father-in-law sent them approximately \$1,010 as a wedding gift. Applicant's husband has contact with his father every few months and last saw him in-person in 2009.⁵

Applicant's stepmother-in-law is a citizen of and resides in Russia. Applicant's limited contact with her stepmother-in-law occurs over social media. Applicant's husband has met his stepmother on only one occasion (2009).⁶

² At hearing, the SOR was amended, without objection, to reflect Applicant's marriage in August 2015.

³ GE 1.

⁴ Response to SOR; Tr. 20, 22, 31, 32.

⁵ Response to SOR; Tr. 23, 28, 38, 39, 44.

⁶ Response to SOR.

Applicant's mother-in-law is a dual citizen of the United States and Russia, residing in the United States. Applicant has weekly to monthly contact with her mother-in-law.⁷

Applicant's husband has a stepsister, two grandmothers, an aunt, an uncle, and a cousin, who are citizens of and reside in Russia. Applicant and her husband have very limited contact with these relatives, though his paternal grandmother sent approximately \$700 as a wedding gift.⁸

Two supervisors and one co-worker provided letters of support attesting to Applicant's exemplary character, work performance, and adherence to procedures.⁹

Administrative Notice

I have taken administrative notice of the following facts concerning Russia:

Russia is one of the top two most aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly in cyberspace. Russian intelligence services target U.S. personnel with access to sensitive computer network information, seeking proprietary, sensitive, and classified information in a broad range of subject areas. One recent growing trend is the targeted recruitment of Russian immigrants with advanced technical skills who work for leading U.S. companies by Russian intelligence services.

Russia's foreign policy objectives clash with those of the United States, particularly Russia's occupation of territories within the sovereign nations of Georgia and the Ukraine.

Russia's human rights record is poor. The judiciary is subject to manipulation by political authorities. Abuses include attacks on journalists, physical abuse by law enforcement officers, harsh prison conditions, arbitrary detention, politically motivated imprisonment, electronic surveillance without judicial permission, and widespread corruption in the executive, legislative, and judicial branches.¹⁰

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

⁷ GE 1.

⁸ GE 1; GE 2; Response to SOR.

⁹ AE A.

¹⁰ AN I.

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 under this guideline is set out in AG ¶ 6 as follows:

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 United States has a compelling interest in protecting and safeguarding [sensitive] 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.”¹¹ 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. “An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a means through which the applicant can be subjected to coercion or exploitation.”¹²

One disqualifying condition under this guideline is relevant to this case:

AG ¶ 7(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.

To establish AG ¶ 7(a) the Government must demonstrate a “heightened risk” due to Applicant’s contacts with her Russian in-laws. Here, the facts for administrative notice, outlining Russia’s geopolitical security profile and intelligence-gathering activities, establish the “heightened risk” element under AG ¶ 7(a). Applicant’s father-in-law, stepmother-in-law, and extended families members are citizens of and reside in Russia. AG ¶ 7(a) applies.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(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

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

¹² ISCR Case No. 11-12659 at 3 (May 30, 2013). See, e.g., ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

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

AG ¶ 8(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.

Russia's intelligence capabilities and aggressive targeting of U.S. sensitive and classified information demonstrate its interests inimical to those of the United States. As a result, Applicant faces a "very heavy burden" of persuasion to show that her father-in-law, stepmother-in-law, and extended family members in Russia are not a means through which Applicant can be subjected to coercion or exploitation.

The paucity of evidence about Applicant's stepmother-in-law and extended family members in Russia prevents me from concluding that they are not in positions or engaged in activities of security concern under AG ¶ 8(a). Applicant and her husband have very limited contacts with his stepmother and extended family members in Russia. The casual nature of these relationships and the infrequency of contact are such that there is little likelihood that they could create a risk for foreign influence or exploitation. AG ¶ 8(c) applies as to Applicant's contacts with her stepmother-in-law and extended family members in Russia.

Applicant's father-in-law is employed by a government-controlled business entity, and he resides in Russia. Applicant has not demonstrated, under the "very heavy burden" of persuasion, that it is unlikely that she, her husband, or her father-in-law will be placed in a position of conflicting interests. AG ¶ 8(a) does not apply.

Applicant and her husband's contacts with their family members in the United States are more frequent than those with her father-in-law. Notwithstanding the infrequency of their contacts, Applicant and her husband maintain a relationship with her father-in-law, as demonstrated by her husband's in-person contact in 2009, the wedding invitation in 2015, the wedding gift in 2015, and the social-media contacts about "normal family things." These contacts buttress the presumption that the nature of Applicant's relationship with her spouse's immediate family members is not casual.¹³ Whether out of a sense of affection or filial obligation, Applicant and her husband affirmatively maintain this relationship with her father-in-law. Taken with the "very heavy burden" of persuasion, I cannot conclude that Applicant and her husband's sense of obligation to her father-in-law is "so minimal." AG ¶ 8(b) does not apply.

For the reasons discussed above, despite the infrequency of their contacts, Applicant and her husband's affirmative actions to maintain their relationship with her father-in-law leads me to conclude that this relationship is not casual. AG ¶ 8(c) does not apply.

¹³ ISCR Case No. 11-12659 at 3 (App. Bd. May 30, 2013).

Applicant mitigated the security concerns associated with her stepmother-in-law and extended family members in Russia (SOR ¶¶ 1.b. and 1.c.). She did not satisfy the “very heavy burden” of persuasion in mitigation as to her and her husband’s contacts with her father-in-law (SOR ¶ 1.a.). Therefore, she has not mitigated the foreign influence security concerns.

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 and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant is well-regarded by her supervisors and co-worker for her character and work performance. There is no evidence impugning her loyalty to the United States. Nonetheless, Applicant and her husband’s actions to maintain their relationship with her father-in-law buttress the presumption of a non-casual relationship. I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.-1.c.	For 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.

Eric H. Borgstrom
Administrative Judge