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

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| In the matter of: | ) | |
| | ) | |
| | ) | ISCR Case No. 15-05586 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2017

## Decision

WHITE, David M., Administrative Judge:

Applicant was born in Denmark. He became a naturalized U.S. citizen in 1998. His wife and mother-in-law are Russian citizens, now residing in the United States. His wife recently obtained dual U.S. citizenship, and her mother just retired from a career working for the Russian government. He renewed his Danish passport in 2008, and initially declined to surrender or destroy it but changed his mind after the record closed. Applicant failed to mitigate resulting security concerns. Eligibility for access to classified information is denied.

## Statement of the Case

On December 18, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 12, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence. The action was taken under 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 after September 1, 2006. The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance.

Applicant answered the SOR in writing (Answer) on March 16, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on July 18, 2016, and issued a Notice of Hearing on July 29, 2016, scheduling the hearing for August 16, 2016. The hearing convened as scheduled. The Government offered one exhibit (GE 1) into evidence. Applicant testified and offered four exhibits (AE A through D). All exhibits were admitted without objection. The Government also requested administrative notice of facts about Russia, to which Applicant had no objection. The request was marked Hearing Exhibit (HE) I, and administrative notice was taken of the facts stated therein. I granted Applicant's request to leave the record open until August 30, 2016, for submission of additional evidence. Applicant submitted AE E while the record remained open, and AE F after the record had closed. Both exhibits are also admitted into evidence. DOHA received the transcript of the hearing (Tr.) on August 24, 2016.

## Findings of Fact

In his Answer, Applicant admitted all of the facts alleged in the SOR, but formally denied each "complaint" because he thought they did not support valid security concerns. During his testimony, he also admitted the accuracy of all facts alleged in the SOR. (Tr. 34-42.) His admissions are incorporated in the following findings of fact.

Applicant was born in Denmark in January 1969. He attended a northern California high school as an exchange student from 1984 to 1985, then returned to the U.S. on a student visa to attend college in August 1988. He married his first wife in 1990, and qualified for a permanent resident visa before they divorced in 1994. He remarried in 1996, and had two children with his second wife before they divorced in 2007. He married again in 2011, and has another child who was born in late 2015. He testified that he has a master's degree in business. He has no military service and has never held a security clearance. (GE 1; Tr 6-7, 43-46.)

Applicant became a naturalized U.S. citizen in March 1998. He continues to be a dual citizen of Denmark and the United States. He last renewed his Danish passport in July 2008. His employment with various companies throughout his career involved substantial international travel, and he reported that he used his Danish passport on nine trips to seven different countries[1] between August 2009 and August 2012. (GE 1; AE D; Tr. 36-42.) He testified:

> I will tell you I use it on occasion for travel, mostly to countries in the world that aren't favorable to Americans, and that is mostly out of my self-preservation and security. . . . I travel frequently and I travel to places that are not always friendly to the United States. . . . It does expire in 2018. I have no interest or desire to renew it unless I see a need. . . . I don't travel as much as I used to. (Tr. 37.)

[1] Four of the countries are NATO allies. Two more have close ties and good relations with the U.S.

Applicant initially testified during the hearing that he would not be willing to surrender his Danish passport to his employer's custody or for destruction. (Tr. 42.) After an explanation concerning the basis for security concerns that may arise from possession and use of a foreign passport, he changed his mind and indicated that he would like to have time after the hearing to surrender his Danish passport to his employer's facility security officer (FSO). (Tr. 60-68.)

While the record remained open after the hearing, however, he changed his mind again. On August 17, 2016, he wrote:

> Turns out [employer] cannot hold my passport, they can only destroy it. The value (at present) of being able to travel through unfavorable nations with my Danish passport exceeds my need for a security clearance. I respectfully withdraw my request for a clearance, but would like to retain the opportunity to apply at a future date if needed. I acknowledge that a reapplication with [sic] come with a need to relinquish my Danish passport. (AE E.)

During early September 2016, Applicant wrote to Department Counsel, saying that he had a "newfound need for the security clearance" and "will surrender my passport etc. if we can resurrect the application." Department Counsel informed him that, since his hearing had already been conducted, ¶ 4.4 of the Directive required continued adjudication of his eligibility for a clearance. Applicant also remained sponsored for a clearance by his employer. Applicant's FSO certified, on September 9, 2016, that she permanently destroyed his Danish passport at his request and with his concurrence, after she informed him that such action would not in any way guarantee the favorable adjudication of his DoD clearance. (AE F.)

Applicant sponsored his current wife for legal residence in the United States in February 2011. They married in July 2011, less than a month after she turned 21 years old. She became a naturalized U.S. citizen in August 2015. She retains dual citizenship with Russia, and has active passports from both countries. She was born and raised in Moscow, Russia, where her mother worked on the staff of the Russian Federation Council.[2] Her parents, who are both Russian citizens, divorced when she was young and she has had no contact with her father since then. Applicant's mother-in-law obtained a permanent resident visa to enter the U.S. between July and November 2016. She intended to retire with a pension from her Russian parliament position in January 2017, then move to the U.S. as a permanent resident to be near her daughter and grandchild. (GE 1; AE A; AE B; AE C; Tr. 28-30, 36, 62, 70.)

Applicant's wife co-owns an apartment in Moscow with her mother and grandmother. Applicant estimated the value of this apartment to be $70,000. Applicant also reported that he holds approximately $20,000 in a Danish bank account, in that country's equivalent of a 401(k) retirement plan, to which he contributed before moving

[2] This is the upper house of the Russian parliament.

to the United States. He maintains that account to avoid the penalties that would accompany early withdrawal or transfer of the funds before he is eligible to retire. Applicant expressed that his job in the U.S. pays quite well, so neither of these foreign assets is significant enough to form the basis for exploitation or leverage against his loyalty and allegiance to the United States. (Answer; GE 1; Tr. 38-39.)

I take administrative notice of the facts concerning Russia that are set forth on pages 3 through 7 of HE I. Highlights include Russia's status as one of the two leading state intelligence threats to U.S. interests based upon capabilities, intent, and broad operational scopes. Russia's increasingly aggressive economic, military, and technological espionage against U.S. interests include expanded recruitment and exploitation of Russian immigrants and recently naturalized dual-citizens for such purposes. Russia also has significant human rights problems, including use of coercion and excessive force against its own citizens in pursuit of perceived state interests.

## Policies

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 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Directive ¶ E3.1.15 states that, "[t]he 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 applying for access to classified information seeks to enter 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 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, "[a]ny 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

### Guideline C, Foreign Preference

AG ¶ 9 sets forth the security concern involving foreign preference:

> 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 two 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; and
>
> (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant was born in Denmark in 1969. He came to the United States in 1988 and became a U.S. citizen in 1998. Based on his Danish citizenship, he has maintained a Danish passport since becoming a U.S. citizen, renewing it most recently in July 2008. He used the Danish passport at least nine times during the next five years for travel to and from seven different countries, most of which are U.S. allies. The evidence raises the above disqualifying conditions and shifts the burden to Applicant to rebut, extenuate, or mitigate the security concern.

AG ¶ 11 provides a condition that could mitigate security concerns in this case:

> (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant decided to surrender his Danish passport for destruction by his FSO in September 2016, but there is no bar to his application for another one. This action occurred after the record had closed, and after Applicant had repeatedly expressed that he did not want to surrender the passport to his security authority or otherwise invalidate it. Considering his recent and frequent use of the Danish passport for travel to numerous countries that are friendly to the United States, his last-minute decision to surrender the passport establishes only partial mitigation under AG ¶ 11(e).

**Foreign Influence**

AG ¶ 6 explains the security concerns pertaining to foreign influence as follows:

> Foreign contacts and interest 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 sets out 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 heighted risk of foreign exploitation, inducement, manipulation, 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.

Applicant has ongoing and close relationships with his wife and her mother. They are lifelong Russian citizens and, until moving recently to live with him, residents of Moscow with minimal ties to the United States. These relationships create both a heightened risk of foreign exploitation or manipulation, and a potential conflict of interest for him. As a recently retired career employee of the Russian parliament, whose sole means of support is now collecting a pension, Applicant's mother-in-law has a close and ongoing connection to the Russian government. These relationships raise a security concern about his obligation or desire to assist those family members by providing sensitive or classified information, if faced with pressure or coercion from an outside source. There is substantial evidence to establish security concerns under AG ¶¶ 7(a), 7(b), and 7(d) based on these relationships. No such concerns arise with respect to Applicant's father-in-law, with whom he, his wife, and his mother-in-law have no present relationship.

Applicant's only foreign financial interests are a relatively small bank account in Denmark holding funds that he cannot withdraw without a significant penalty, and his wife's partial ownership interest in her family's apartment in Moscow. Neither of these interests is substantial enough to reasonably support security concerns under AG ¶ 7(e) over heightened risk of foreign influence or exploitation.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. The three with potential application in mitigating the above security concerns in this case are:

> (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.;
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> (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) does not provide mitigation under the facts in this case. Applicant's wife and mother-in-law are citizens of Russia. His wife recently obtained dual citizenship in the United States and her mother obtained a permanent resident visa to move to the U.S. after her 2017 retirement from working for the Russian parliament. Both women retain close and lifelong connections to Russia, which is a top-tier practitioner of espionage against U.S. interests.

AG ¶ 8(b) has some application. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S.," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant has lived in the United States since 1988 and became a citizen in 1998. His wife is a recently naturalized U.S. citizen. His three children are U.S. citizens. Most of his economic ties are in the United States. However, those connections to the United States do not sufficiently mitigate concerns arising from his ties of affection for his wife and mother-in-law. The evidence does not clearly establish that if Applicant were placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States, that he would choose the United States, particularly when viewed in conjunction with his reluctance to surrender his foreign passport.

AG ¶ 8(c) applies only to mitigate potential security concerns about Applicant's father-in-law, whom he has never met. Applicant sponsored his wife's entry into the United States and married her shortly thereafter. They have a newborn child together. His mother-in-law has been approved for permanent resident status to join the family after her retirement from employment by the Russian government. These contacts with his wife and mother-in-law are neither casual nor infrequent.

**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 relevant 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 facts and circumstances surrounding this case. Some mitigating evidence weighs in Applicant's favor. He is an intelligent and articulate person, who has chosen to live and work in the United States since 1988. His immediate family and has most of his financial interests are in the United States. His wife and three children are U.S. citizens.

There are no allegations of any misconduct by Applicant. He did, however, express his desire to maintain and exercise the privileges of his foreign citizenship on numerous occasions after becoming a naturalized U.S. citizen. He was very reluctant to surrender his Danish passport, and gave no reasonable explanation for doing so other than some unspecified "newfound need for a security clearance" after the record had closed. His mother-in-law's career working at high levels of the Russian parliament ended very recently, and she receives an ongoing pension from that government. Applicant's affinity for, and close connections with, his Russian wife and mother-in-law are continuing. He provided insufficient evidence that the resulting potential for pressure, coercion, exploitation, or duress is diminished.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the security concerns arising under Guideline C and Guideline B. Overall, the record evidence generates significant doubt as to Applicant's eligibility and suitability for a security clearance.

## 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:

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| Paragraph 1, Guideline C: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Paragraph 2, Guideline B: | AGAINST APPLICANT |
| Subparagraphs 2.a and 2.b: | Against Applicant |
| Subparagraphs 2.c through 2.e: | 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.

David M. White
Administrative Judge