



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



In the matter of:

ISCR Case No. 15-06342

Applicant for Security Clearance

Appearances

For Government: Gina L. Marine, Esq., Department Counsel

For Applicant: *Pro se*

June 19, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On February 11, 2015, Applicant submitted a security clearance application (SF-86). On March 21, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. (Item 1.) The action was taken 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on April 8, 2016. He denied all of the SOR allegations concerning his Foreign Influence, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On August 24, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant

on August 25, 2016, and received by him on August 30, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant failed to respond to the FORM. DOHA assigned the case to me on June 5, 2017. Items 1 through 6 are admitted into evidence.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Request for Administrative Notice

The Government requested I take administrative notice of certain facts relating to Russia. Department Counsel provided a nine page summary of the facts, supported by 16 Government documents pertaining to Russia. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 35 years old. He is married. He has a Bachelor's degree. He is employed with a defense contractor as a Principal Consultant. He is seeking to obtain a security clearance in connection with his employment.

Guideline B – Foreign Influence

Applicant is a Russian citizen by birth. Applicant became a naturalized United States citizen on May 13, 2010 and gave up his Russian citizenship at that time. For the past fourteen years, he has worked for various American companies. Since January 2014, he has been working for his current employer. He has never held a security clearance before. Applicant travels for his employment 75 percent of the time, and works from home the remaining 25 percent of the time. (Government Exhibit 4.)

Applicant's mother, father, brother, and half-sister are citizens and residents of Russia. Applicant's mother's former employment was either that of an editor or a house wife, as the record is not clear. Applicant's father is employed by the Russian government as an Engineer. There is no evidence as to what his brother does. His half-sister works for a travel agency in Russia. Applicant travels for in-person visits to

see his family. The record is not clear where those visits took place. Applicant visited with his family in August 2002; January 2003; October 2010; and September 2014. Applicant also maintains contact with his family via telephone and electronic communications. (Government Exhibit 3.) During his subject interview, Applicant stated that his relatives in Russia do not know that he is applying for a security clearance. (Government Exhibit 4.)

Applicant is married to a native-born American citizen. They have financial holdings in the United States, including bank accounts, property, and investment accounts. He states that they plan to live, work and retire in the United States. (Government Exhibit 2.)

Two letters of recommendation, one from Applicant's supervisor, and the other from a long time friend, were submitted on behalf of the Applicant. They collectively indicated that Applicant has always been a professional, dedicated, trustworthy and honest person in their eyes. He is described as being very organized, competent, and an individual of high character. They both recommend him for a security clearance. (Applicant's Answer to the SOR.)

Notice

According to information compiled for the National Counterintelligence Executive's 2011 Report to Congress on Foreign Economic Collection and Industrial Espionage, Russia remains one of the top two most aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly cyberspace. Russian intelligence services continue to target U.S. and allied personnel with access to sensitive computer network information. Russia seeks data on advanced weapon systems and proprietary information from U.S. companies and research institutions that deal with energy, finance, the media, defense and dual use technology. No matter what the consequences, Russia has been relentless in their attempt to illegally gather our most sensitive economic, defense technology and other intelligence information. Russia goes to extraordinary lengths through covert agents and diabolical schemes to obtain this information which is a serious and direct threat to the national security of the United States. The United States continues the effort to fight against this threat by conducting highly complex and sensitive counterespionage investigations and prosecutions to ensure that our sensitive technology does not get into the wrong hands.

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, administrative judges apply the guidelines 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), 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies 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.

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 relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern

if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

- (a) contact, regardless of method, 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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant's foreign family members are residents and citizens of Russia. Applicant maintains close and continuing contact with his family. Applicant's ties to his family members who are citizens and residents in a country of heightened concern poses a security risk for the United States Government. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and none of them are applicable in this case.

Family ties in a foreign country raises a prima facie security concern that required the applicant to "present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him". Thus, Applicant bears the burden to establish that his relatives are not vulnerable to influence, coercion, exploitation, or duress. More importantly, Applicant is at a higher risk of being target for Russian intelligence gathering since he works for a defense contractor. He has failed to meet this burden and failed to establish that any of the six mitigating conditions under Guideline B 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis.

Applicant performs well at his job and has the endorsement of his supervisor and a close friend. It is noted that while he was born in Russia, he is an American by choice. However, he has close and continuing contact with his family in Russia. Other than his wife, his closest familial ties are with them. Given the nature of Applicant's work, the nature of the foreign country, his foreign contact with his family, and his father's work for the Russian Government, a significant security risk remains evident.

Overall, the record evidence leaves me with questions and or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:

Against APPLICANT

Subparagraph 1.a:

Against 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.

Darlene Lokey Anderson
Administrative Judge