



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-06345

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his use and possession of a Russian passport after he became a U.S. citizen. However, security concerns remain about his mother and sister, who are citizens and residents of Russia. Applicant's request for a security clearance is denied.

Statement of the Case

On November 24, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for a security clearance required for his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the national interest to continue Applicant's security clearance.¹

On February 16, 2016, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for foreign

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

influence (Guideline B) and foreign preference (Guideline C). Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. Subsequently, the Government timely requested a hearing, as authorized by Section E3.1.7 of the Directive.

The case was assigned to me on May 18, 2016, and I convened the requested hearing on June 28, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 and 2. Department Counsel also submitted a memorandum and 18 attachments in support of a request that I take administrative notice of certain information about Russia germane to this adjudication. I granted Department Counsel's request, and have included it as Hearing Exhibit (Hx.) 4.³ Applicant testified and presented, as a post-hearing submission, Applicant's Exhibit (Ax.) A.⁴ All exhibits were received without objection. I received a transcript of the hearing (Tr.) on July 14, 2016.

Findings of Fact

Under Guideline C, the Government alleged that Applicant possesses a Russian passport issued to him in September 2013 and valid until September 2023 (SOR 1.a); that Applicant applied for his Russian passport in 2013, after becoming a U.S. citizen in 2003 (SOR 1.b); and that, as a U.S. citizen, Applicant used his Russian passport for travel to Russia in April 2012 and November 2014 (SOR 1.c).

Under Guideline B, the Government alleged that Applicant's mother (SOR 2.a) and sister (SOR 2.b) are citizens of, and reside in, Russia. Applicant admitted, with explanations, each of the SOR allegations. In addition to the facts established through Applicant's admissions, I make the following findings of fact.

Applicant is 56 years old and employed as a scientist by a defense contractor. He started in that position in August 2013. Before that, Applicant was the chief scientist in a small engineering consulting company he and an associate owned from 2000 until 2013. From 1993 until 2000, Applicant worked as a scientist at a large U.S. Government facility managed by a private federal contractor who employed Applicant. Since 1993, Applicant has worked in support of government programs, but this is his first request for a security clearance.(Gx. 1; Gx. 2; Tr. 24 - 25, 29)

Applicant was born, raised, and educated in Russia. He earned master's and doctoral degrees from Russian universities in 1983 and 1987, respectively. Thereafter, he worked in a Russian academic and scientific research institution until immigrating with his wife and son to the United States in 1993. Applicant received his green card in 1997 and was naturalized as a U.S. citizen in 2002. Applicant's wife of 32 years and their 30-year-old son are also Russian-born naturalized U.S. citizens. (Gx. 1; Gx. 2; Tr. 32 - 33)

Under Russian law, Applicant is still a Russian citizen, despite his U.S. naturalization. Applicant is willing to renounce his Russian citizenship, but the process is expensive and difficult. Also, Applicant believes renouncing his Russian citizenship would attract unwanted attention from the Russian government. (Gx. 2; Tr. 26)

³ Tr. 20 - 23.

⁴ Ax. A is an email, dated June 29, 2016, from a senior security specialist at Applicant's place of employment verifying that Applicant had surrendered his Russian passport prior to the hearing.

When Applicant immigrated to the United States, he had a Russian passport. He used and renewed that passport before he became a U.S. citizen. After he was naturalized in 2002, Applicant continued to possess and use a valid Russian passport. He used the passport twice – in 2012 and 2014 – as a U.S. citizen. Applicant stated that Russia requires persons with Russian citizenship to use a Russian passport to obtain the required visas to enter the country. Applicant was advised when he was hired for his current job that he might have to relinquish his Russian passport because he requires a security clearance for his work. In April 2016, he turned over his passport to his employer's security officer. (Answer; Gx. 1; Gx. 2; Ax. A; Tr. 26 - 28)

Applicant's mother is 79 years old. She is a retired nurse living in Russia. His mother lives with his sister, a 46-year-old technician at a vision clinic, and her family. No one in Applicant's family has any ties to the Russian government. Applicant speaks by telephone to his mother about once every three months. He speaks with his sister about once every six weeks. Applicant's mother visited him in the United States in 2000. His sister came to see him in 2003 and 2007. Applicant visited them in November 2014 in order to say good-bye to his mother in view of the likelihood he would no longer have a Russian passport that would gain him entry to Russia. He does not plan to return to Russia at any time. (Answer; Gx. 1; Gx. 2; Tr. 28, 33 - 38)

Applicant does not have any financial or property interests outside the United States. He voted in one election while still living in Russia, and only because it was illegal to not vote at the time. In the United States, he owns his house and has between \$400,000 and \$500,000 in retirement savings here. He attends church where he lives, and his son is completing studies and residency in the United State to become a physician here. (Tr. 41 - 45)

Based on the information provided about the Russian government in Hx. 4, I take administrative notice of the following facts:

Russia is one of the most active participants in espionage against the United States and its interests, aggressively targeting and collecting military, economic, and technology information. Over the past decade, Russia has exhibited an increased willingness to engage in cyber activity such as government-supported hacking of U.S. Government and private industry information systems. Its human intelligence activities also reflect a long-term effort to further its geopolitical and military interests, which are directly at odds with those of the United States. Russia also has an abysmal human rights record, characterized by extra-judicial killings, discrimination against minority ethnic, religious, and social groups, government reprisals against critics of the Russian president, and across-the-board denial of basic civil liberties. Finally, Russia is plagued in many of its regions by international terrorist activities, including, but not limited to, attacks and atrocities by ISIS or ISIS-inspired actors.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a)

⁵ See Directive, 6.3.

of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Foreign Preference

Despite being naturalized as a U.S. citizen in 2002, Applicant is still viewed under Russian law as a Russian citizen. As alleged in SOR 1.a - 1.c, in 2012 and 2014 Applicant exercised his Russian citizenship when he renewed and used a Russian passport. These facts raise a security concern about foreign preference that is articulated at AG ¶ 9, as follows:

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.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

More specifically, the record requires application of the disqualifying condition at AG ¶ 10(a)(1) (*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*).

Applicant obtained a Russian passport to comply with Russian laws and regulations governing travel by Russian citizens. By contrast, the record also requires application of the mitigating position at AG ¶¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*); and 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). Applicant stated in his EQIP, during an interview with a Government investigator, in response to the SOR, and in his testimony, that he is willing to renounce his Russian citizenship. He also observed, prudently, that it might attract undesired attention from the Russian authorities were he to actually go through the renunciation process. Additionally, in April 2016, Applicant surrendered his Russian passport to his company's security officer.

Applicant was credible in his assertion that he does not intend to return to Russia and that he no longer needs or wants his Russian passport. Further, his passport did not confer on him any other benefits of citizenship and he did not seek to use his foreign citizenship in any way other than was presented by Russian regulations governing its citizenship and entry into that country. The security concern under the guideline is resolved for Applicant.

Foreign Influence

The Government's information, along with Applicant's admissions, is sufficient to support the factual allegations under this guideline. The facts established reasonably raise a security concern about possible foreign influence that is addressed, in relevant part, at 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.

Applicant's elderly mother, a retired nurse, lives with Applicant's younger sister and her family. Their presence in Russia, a country known to abuse its citizenry to serve its purposes, presents a heightened risk that they could be used to pressure or coerce Applicant to compromise information entrusted to him.

Of the specific disqualifying conditions listed under this guideline, 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*) applies to these facts and circumstances.

I have also considered the following AG ¶ 8 mitigating conditions:

(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.;

(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.

As to AG ¶¶ 8(a) and 8(c), Applicant did not establish that his relationships with his mother and sister are not close. Applicant speaks regularly with his mother and sister, and there is a rebuttable presumption that Applicant's relationships with them are close. Also to be considered is the oppressive nature of the Russian government and its aggressive actions in opposition to U.S. interests. Applicant did not establish that the presence of his relatives, given the heightened risk presented by these facts, would not conflict with his responsibility to protect classified information. AG ¶¶ 8(a) and 8(c) do not apply.

As to AG ¶ 8(b), I have considered that Applicant has established his life in the United States. His wife and son are also naturalized U.S. citizens, and his son has been educated here and is finishing his medical residency. Applicant has owned his homes here wherever he has resided, and he has substantial retirement savings. He has worked in sensitive U.S. Government programs without a clearance, but little else is known about Applicant's personal and professional life. He provided no character references or other information from which to conclude he has deep and longstanding relationships in the United States that would effectively counterbalance the heightened risk presented by his close relationships in Russia. AG ¶¶ 8(b) does not apply. On balance, available information shows that the security concerns about this Applicant possibly being influenced by foreign connections and interests are not mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has firmly established his personal life and professional career in the United States over the past 20 years. However, as I noted in my analysis of the foreign influence concerns, Applicant's information about those aspects of his background was not sufficient to resolve the Government's doubts about his ability to safeguard classified information if the Russian government tried to leverage his personal relationships in Russia. Because protection of national security is the principal focus in these adjudications, any remaining doubts are resolved against the granting of access to classified or sensitive information.

Formal Findings

Formal findings 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 C:	FOR APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge