



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



In the matter of:

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 15-08631

**Appearances**

For Government: Caroline E. Heintzleman, Esq., Department Counsel  
For Applicant: *Pro se*

02/01/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's spouse has strong connections to Russia. She is a citizen of Russia; she travels to Russia almost every year; she stays in Russia for two or three months; she uses her Russian passport; and she visits and frequently communicates with her aging parents and one of her sons residing in Russia. Russia aggressively seeks classified and sensitive information from the United States and might use Applicant's spouse, her son, or her parents to put pressure on Applicant in an attempt to compromise classified or sensitive information. Foreign influence security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

On February 24, 2014, Applicant submitted an Electronic Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On July 13, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline B (foreign influence). The SOR recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2)

On July 29, 2016, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On September 29, 2016, Department Counsel was ready to proceed. On October 6, 2016, the case was assigned to me. On November 18, 2016, the Defense Office of Hearings and Appeals issued a hearing notice setting the hearing for December 8, 2016. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 6-7) The hearing was held as scheduled. At the hearing, the Government provided two exhibits; Applicant offered nine exhibits; and all exhibits were admitted into evidence without objection. (Tr. 18-22; GE 1-2; Applicant Exhibits (AE) A-I) On December 16, 2016, I received a transcript of the hearing (Tr.).

### **Procedural Rulings**

Department Counsel offered 16 exhibits for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Russia. (Tr. 18-20; HE 4; Source Documents I-XVI) I have also incorporated information from the U.S. Department of State website, *Background Notes Russia* for some basic, well-known information about Russia such as population and diplomatic agreements with the United States to ensure the record contained some positive information about Russia's relationship with the United States. See note 2 *infra*. I have also incorporated various provisions mostly verbatim from Department Counsel's summary without attribution, quotation marks, and footnotes in the section labeled Russian Federation, *infra*.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant did not object to me taking administrative notice of the proffered documents, and Department Counsel's request is granted.

### **Findings of Fact<sup>1</sup>**

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e, and he provided explanations and mitigating information. (HE 2) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

---

<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Applicant is a 55-year-old system security engineer, who is employed by a government contractor. (Tr. 8, 15, 23; GE 1; GE 2; SOR response) Applicant was born in the United States. (Tr. 15) In 1979, he graduated from high school. (Tr. 8) In 2005, he received a bachelor's degree in computer science. (Tr. 9) He has taken several courses towards a master's degree. (Tr. 9) He holds numerous professional information technology certifications. (Tr. 24) His resume provides a detailed description of his extensive information technology experience. (AE D)

In 1984, he married, and in 1991, he divorced. (Tr. 9, 24) In 2000, he married. (Tr. 9) He does not have any children. (Tr. 9) He has one brother and one sister who live in the United States and are U.S. citizens. (Tr. 23)

In 1980, Applicant joined the U.S. Air Force (AF), and he honorably retired as a technical sergeant (E-6) in 2000. (Tr. 10) He was promotable to master sergeant (E-7) when he elected to retire from the AF. (Tr. 52) From 2000 to 2007, he worked for a DOD agency. (Tr. 26) For 22 months from 2007 to 2008, he was deployed to Iraq as a DOD contractor. (Tr. 26, 50-51) Since 1980, he has held a security clearance, and there is no evidence of any security violations. (Tr. 16, 27)

In 1960, Applicant's spouse was born in Russia. (Tr. 16; GE 1) In 1998, Applicant first communicated with his spouse over the Internet, and in 1999, he physically met her. (Tr. 40-41) He notified the AF Office of Special Investigations (OSI) about his relationship with his future spouse. (Tr. 41) She has resided in the United States since 2000. (Tr. 16, 43) In 2007, Applicant's spouse became a U.S. citizen. (Tr. 16, 28) His spouse's annual income as a self-employed artist is about \$13,000. (Tr. 44) One of Applicant's spouse's sons, E, resides in the United States and, in 2008, he became a U.S. citizen. (Tr. 16, 28) Applicant's spouse and E both currently reside in the United States; however, they have maintained their Russian citizenships. (Tr. 16, 28) E is married, and E's spouse resides in the United States. (Tr. 28) E most recently visited Russia in July 2016. (Tr. 28)

Applicant's spouse's other son, S, lives in Russia, is married, is a citizen of Russia, and has one daughter. (Tr. 24) S is a low-level employee of a law enforcement entity for a state in Russia. (Tr. 28, 33, 52) S began the process of emigrating from Russia to the United States. (Tr. 28) S and his spouse obtained U.S. permanent resident cards; however, they elected to return to Russia. (Tr. 28) Applicant's spouse communicates with S about once a week. (Tr. 45) Applicant's spouse visits S when she goes to Russia. (Tr. 46)

In 1993, Applicant's spouse purchased an apartment in Russia that is now valued at about \$13,000. (Tr. 27, 39) Applicant's spouse lives in the apartment when she visits Russia. (Tr. 27) She rents her apartment in Russia when she is in the United States. (Tr. 27) She has \$3,000 to \$4,000 in a Russian bank account.<sup>2</sup> (Tr. 39, 44)

---

<sup>2</sup>Applicant's SOR does not allege four issues of security significance: (1) his spouse has retained and actively uses a Russian passport; (2) his spouse visits Russia almost every year; (3) his spouse stays in Russia two to three months each year; and (4) his spouse has a Russian bank account. In ISCR Case

Applicant's mother-in-law and father-in-law are about 87 years old, and they are citizens and residents of Russia. (Tr. 27, 29) The Russian Government did not employ Applicant's parents-in-law, and they are currently retired. (Tr. 33) Applicant's spouse communicates with her parents about three times a week. (Tr. 45) Applicant's spouse visits her parents about once a year, and she stays in her apartment for her visits, which are two to three months in duration. (Tr. 27, 43) Applicant's apartment is in fairly close proximity to her parents' residence in Russia. (Tr. 44) Applicant partially funds his spouse's visits to Russia. (Tr. 44) His spouse's maintenance of her Russian citizenship obviates the necessity of obtaining a Russian Visa when she is visiting and living in Russia because she uses her Russian passport. (Tr. 27, 36, 49) Applicant anticipates that his spouse will continue to visit her parents in Russia, and he "would never ask her not to do that." (Tr. 50)

In 2000, and 2008, Applicant traveled to Russia and visited his parents-in-law. (Tr. 29, 31, 36) Applicant rarely speaks to his parents-in-law and only when his spouse communicates with them using Skype. (Tr. 29, 36) He does not communicate with S. (Tr. 32) Applicant does not speak Russian, and his parents-in-law do not speak English. (Tr. 29, 36) Applicant's parents-in-law receive about \$200 monthly in retirement from the Russian Government, and in 2014, Applicant voluntarily paid \$25,000 to purchase an apartment they could rent in Russia for additional income. (Tr. 30, 36-37, 52) In 2014, Applicant borrowed \$25,000 to purchase the apartment in Russia, and his monthly payment is \$500. (Tr. 40, 47) His parents-in-law now have about \$400 monthly in income. (Tr. 30) Applicant anticipates that his spouse and her sister will inherit their parents' apartment. (Tr. 48) He has not continued to provide financial support to his family in Russia, and he does not intend to provide financial assistance to them in the future. (Tr. 30, 32)

Applicant provides financial support to his family residing in the United States, and he has significant financial connections to the United States. (Tr. 27) His annual income is about \$95,000. (Tr. 37) He owns a home in the United States valued at \$175,000 with a mortgage of \$126,000 and four vehicles. (Tr. 37; AE G) His approximate net worth is about \$225,000. (Tr. 39-40)

Applicant denied that he has any loyalty or obligation to Russia. (Tr. 30) He does not have any direct relationships with anyone living in Russia. (Tr. 31) He would report any improper contacts, pressure, or efforts by a foreign power to cause him to

---

No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). *See also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These four allegations will not be considered except for the five purposes listed above.

compromise classified information to the proper authorities. (Tr. 37-38) Applicant believes his security clearance was properly adjudicated and approved in 2004 and 2009, with all the same information about his connections to Russia that is currently being considered. (Tr. 38; SOR response)

### **Character Evidence**

A coworker and neighbor of Applicant is a retired AF colonel who has held a security clearance for 43 years, and he has known Applicant and his spouse for 15 years. (Tr. 54-59; AE C) Another coworker, who held a security clearance for 35 years, retired from the AF after 22 years of active service, and he has known Applicant for 18 years. (Tr. 64-65; AE H; AE I) A friend has known Applicant for 16 years and held a security clearance for 22 years. (AE A) His supervisor has known Applicant since June 2016 and held a security clearance for 42 years. (AE B) The general sense of their four statements is that Applicant is trustworthy, professional, honest, reliable, responsible, serious, and dedicated to mission accomplishment. They recommended continuation of Applicant's security clearance. (Tr. 55-71; AE A; AE B; AE C; AE H; AE I)

Applicant received the following medals and awards during his AF service: AF Achievement Medal with two Bronze Oak Leaf Clusters (BOLC); AF Outstanding Unit Award with two BOLCs; AF Good Conduct Medal with four BOLCs; National Defense Service Medal; AF Overseas Short Tour Ribbon; AF Overseas Long Tour Ribbon with two BOLCs; AF Longevity Service Award Ribbon with three BOLCs; NCO Professional Military Education Graduate Ribbon with one BOLC; Small Arms Expert Marksmanship Ribbon; and AF Training Ribbon. (AE E) He also completed numerous military training courses. (AE E) In July 2015, he received a certificate of appreciation from a wing commander. (AE F)

### **Russian Federation<sup>3</sup>**

Russia is a vast and diverse federation with a total population of about 140 million. Russia achieved independence with the dissolution of the Soviet Union in August 1991. Russia inherited the Soviet Union's permanent seat on the United Nations Security Council, most of its military assets, and the bulk of its foreign assets, and its debts. Russia retained a powerful military and remains a nuclear superpower. Russian political power is concentrated in the executive branch, primarily in the president and prime minister. Its weak multiparty political system is dominated by the pro-government United Russia party and a bicameral legislature consisting of the State Duma (lower house) and Federation Council (upper house).

Russia has an uneven human rights record. The December 2011 parliamentary elections were criticized by international observers for government interference, manipulation, and electoral irregularities. In March 2012, President Putin was selected

---

<sup>3</sup>In addition to the materials cited in Department Counsel's request for administrative notice, some facts discussing positive aspects of the relationship between Russia and the United States are from the Department of State, *Background Notes Russia* (April 30, 2009), available at <http://www.state.gov/outofdate/bgn/russia/143281.htm>.

for a third term, after already serving the constitutional maximum of two consecutive terms. Russia has a recent history of political persecution of individuals who threatened powerful state or business interests. While there was free expression on the Internet and in some print and electronic media, self-censorship and the government's ownership of and pressure on some outlets limited public discourse.

Russian law forbids entry to private residences except in cases prescribed by federal law. Government monitoring of correspondence, telephone conversations, or other means of communication without a warrant and collection, storage, utilization, and dissemination of information about a person's private life without consent are also prohibited. Russia suffers from a weak judiciary, widespread corruption, physical abuse, violence against women and children, unauthorized electronic surveillance and entry of private residences, and restrictions on the right to free assembly.

United States citizens traveling in Russia may be subject to indiscriminate acts of terror in Russia. Russian human rights abuses in the Chechen conflict include torture, summary executions, use of indiscriminate force, and arbitrary detentions. In addition to problematic behavior in the Chechen conflict, Russian authorities engage in arbitrary arrest and detention as well as torture and abuse to obtain confessions. Widespread government corruption, harsh prison conditions, and endemic crime are significant Russian problems. The Russian legislature has passed a series of reforms in Russian criminal procedural laws, making their law more consistent with Western standards. Russian human rights performance has improved in some areas.

In 2016, the leading state intelligence threats to U.S. interests were Russia and China, based on their capabilities, intent, and broad operational scope. Russia inherited a significant intelligence capability from the former Soviet Union, and continues to focus, with increasing sophistication, on collecting sensitive and protected U.S. technologies through its intelligence services. Russia has an active, ongoing collection program targeting sensitive U.S. industrial and military technology as well as commercial and dual-use technology. Russia also targets national security and signal intelligence. Russia is one of the most aggressive collectors of U.S. economic information and technology, using human intelligence, cyber, and other operations.

In June 2010, ten Russian Intelligence Service secret agents were arrested for carrying out deep-cover assignments for Russia in the United States. In July 2010, all ten pleaded guilty to conspiracy to act as an agent of a foreign government, and they were expelled from the United States. In January 2011, a convicted spy and former U.S. Central Intelligence Agency employee was sentenced to an additional 96 months in prison after pleading guilty to conspiracy to act as an agent of a foreign government and conspiracy to commit international money laundering. He passed information to the Russian government in exchange for money between 2006 and 2008.<sup>4</sup> Department Counsel's administrative notice request details additional Russian violations of the laws of the United States involving collection of sensitive and classified information.

---

<sup>4</sup>There is no evidence that Applicant, his spouse, or her family in Russia are involved in or connected with any criminal activity on behalf of Russia.

The U.S. Office of the National Counterintelligence Executive reports a possible increase in Russian collection over the next several years because of the many Russian immigrants with advanced technical skills working for leading U.S. companies who may be targeted for recruitment by Russian intelligence services. Russia's increasing economic integration with the West is seen as likely to lead to a great number of Russian companies affiliated with the intelligence services, often through employing ostensibly retired intelligence officers, doing business with the United States. Beyond collection activities and espionage directed at the United States, Russia has provided various military and missile technologies to other countries of security concern, including China, Iran, Syria, and Venezuela.

In March 2014, Russia attempted to annex sovereign Ukrainian territory. Russia previously seized the Crimean Peninsula. The United States does not recognize Russia's attempted annexations and has called on President Putin to end this occupation and withdraw his forces. In March 2016, the United States reaffirmed its commitment to a united sovereign Ukraine.

Russia and the United States are occasionally aligned on political initiatives and have joined in numerous international agreements, including efforts to resolve international political problems at the United Nations. For example, the United States and Russia entered into a bilateral World Trade Organization accession agreement in 2006. Russia imports U.S. goods valued at several billion dollars. Russia and United States are allies in the war on terrorism, and both seek to suppress the proliferation of weapons of mass destruction. Both countries have emphasized the reduction of strategic arsenals. The United States has spent billions of dollars in "Nunn-Lugar" funds and related programs to assist Russia with dismantling nuclear weapons and ensuring security of its nuclear weapons, weapons grade material, and other weapons of mass destruction. Russia has attempted to use its significant oil and gas exports as sources of political influence. In July 2009, President Obama and then Russian President Medvedev established a Bilateral Presidential Commission dedicated to improving coordination between the two countries, identifying areas of cooperation, and pursuing joint projects that strengthen strategic stability, international security, economic well-being, and the development of ties between the Russian and American people.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).



## Analysis

### Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates three 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 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 is credited with refuting SOR ¶ 1.e. Applicant has decided not to provide any additional financial support to his parents-in-law living in Russia.

Applicant does not have frequent contact with anyone who is a citizen and permanent resident of Russia; however, he shares living quarters with his spouse, and his relationship with her “creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.” His spouse has frequent contact<sup>5</sup> with her parents and S, who are citizens and residents of Russia. Her frequent contacts with her family are a manifestation of her care and concern for her relatives living in Russia.

---

<sup>5</sup>The Appeal Board has concluded that contact every two months or more frequently constitutes “frequent contact” under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See *also* ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant’s siblings once every four or five months not casual and infrequent).

There are widely documented safety issues for residents of Russia because of terrorists and the activities of the Russian Government. The mere possession of close family ties with one or more family members living in Russia, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant lives with his spouse when she is not visiting Russia. She maintains a close relationship with her parents and S, who are residents and citizens of Russia. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse, and she has ties of affection to her parents and S, who are citizens and residents of Russia. “[A]s a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d).

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Russia with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his spouse’s relationships with her family members living in Russia do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his spouse and her family living in Russia.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified 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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Russia seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Russia has a problem with terrorism. However, the primary concern relates to the activities of Russian intelligence operatives. Applicant's spouse's relationships with relatives living in Russia create a potential conflict of interest because terrorists or Russian intelligence agents could place pressure on Applicant's spouse, her parents, or S living in Russia in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7(d). Department Counsel produced substantial evidence of Applicant's spouse's contacts with her family in Russia and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the mitigating conditions fully apply. Applicant provided important mitigating information. He has substantial connections to the United States. He was born and educated in the United States. He honorably retired from the AF. He received awards and medals from the AF. He served 22 months in Iraq as a DOD contractor. He has held a security clearance since 1980 without any security violations. He has substantial financial connections to the United States. He has one brother and one sister who live in the United States and are U.S. citizens. He has shown his patriotism, loyalty, and fidelity to the United States during his years of support to DOD.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his spouse and his spouse's relationships with her relatives who are citizens and residents of Russia. Applicant's spouse was born in Russia. She resided in Russia for the first 39 years of her life. She has resided in the United States since 2000, and in 2007, she became a U.S. citizen. She is a citizen of Russia, and she travels to Russia almost every year. She stays in Russia for two or three months. She uses her Russian passport, and she visits her aging parents and S, who are citizens and residents of Russia. She communicates frequently with her parents and son in Russia. Applicant through his spouse and her relatives living in Russia are potential targets of terrorists and Russian intelligence agents. Applicant's continued access to classified information could theoretically add risk to his spouse and her relatives living in Russia.

In sum, Applicant's connections to the United States are important; however, they are insufficient to mitigate concerns over his connections to his spouse and her connections to Russia. Foreign influence concerns under Guideline B are not mitigated.

### **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 the 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 55-year-old system security engineer, who is employed by a government contractor. He was born and educated in the United States. He holds numerous professional information technology certifications. His resume provides a detailed description of his extensive information technology experience.

Applicant joined the AF in 1980, and he honorably retired as a technical sergeant in 2000. From 2000 to 2007, he worked for a DOD agency, and for 22 months from 2007 to 2008, he deployed to Iraq as a DOD contractor. He has one brother and one sister who live in the United States and are U.S. citizens. He has held a security clearance since 1980, and there is no evidence of any security violations. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations.

Four friends and coworkers provided character evidence supporting continuation of Applicant's security clearance. The general sense of their statements is that Applicant is trustworthy, professional, honest, reliable, responsible, serious, and dedicated to mission accomplishment. They recommended continuation of Applicant's security clearance. Applicant received medals and awards during his AF service, and he received a certificate of achievement after his AF retirement.

In 1960, Applicant's spouse was born in Russia. In 2000, she married Applicant, and she emigrated from Russia to the United States. Applicant notified the AF OSI of his relationship with her. In 2007, she became a U.S. citizen, and she took an oath of allegiance to the United States. One of Applicant's spouse's sons, E, resides in the United States and, in 2008, he became a U.S. citizen. His spouse has maintained her Russian citizenship.

Applicant's spouse travels to Russia almost every year. She stays in Russia for two or three months in her apartment. She uses her Russian passport to visit Russia.

She visits her aging parents and one of her sons in Russia. Her parents receive a pension from the Russian Government of about \$200 monthly, and the Russian Government could terminate that pension to put pressure on her parents. She communicates frequently with her parents and son in Russia. S is a low-level employee of a law enforcement entity for a state in Russia.

A Guideline B decision concerning Russia must take into consideration the geopolitical situation and dangers there.<sup>6</sup> Russia aggressively seeks classified and sensitive information from the United States. Russia has an effective intelligence apparatus. Russia is a superpower with a powerful military and nuclear weapons. Russia has violated international norms and has ongoing disputes with the United States relating to Russia's military and diplomatic actions in the Ukraine, the Crimea, and Syria. The Russian Government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Russian Governments are allies in the war on terrorism and over the years have made several important diplomatic agreements. Because of Russia's diplomatic and military rivalry with the United States in several areas and aggressive intelligence targeting of the United States, there is a "heightened risk" that Russia will attempt to pressure Applicant through his spouse, his parents-in-law, and S, who are vulnerable to Russian intelligence operatives.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence concerns are not mitigated, and eligibility for access to classified information is denied.

### **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
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.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.

---

Mark Harvey  
Administrative Judge

---

<sup>6</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).