



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 15-01665

**Appearances**

For Government: Andrea M. Corrales, Esquire

For Applicant: *Pro se*

08/01/2018

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On September 14, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence).<sup>1</sup> In a response signed on September 21, 2015, he admitted five of the six allegations raised and requested a determination based on the written record. On January 31, 2018, the Government issued a File of Relevant Material (FORM) with five attachments ("Items"). Applicant offered no response to the FORM within the time provided. The case was assigned to me on May 23, 2018. Based on my review of the case file and submissions, I find Applicant failed to mitigate security concerns.

**Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about The Russian Federation (Russia). The request was included in the record as Item 5. Applicant did not object. I have taken administrative notice of the facts contained in Item 5. The facts administratively noticed are summarized below.

<sup>1</sup> 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 (AG) effective within the DOD on or after June 8, 2017.

## Findings of Fact

### Russia

Russia “has a highly centralized, authoritarian political system dominated by President Vladimir Putin.” Although “[t]he United States has long sought a full and constructive relationship with Russia,” current relations between the two old war allies appear to have again turned adversarial. Of note, in August 2017, the President signed into U.S. law sanctions targeting Russia for, in part, Russian interference in the 2016 U.S. elections and Russia’s aggression in Ukraine, including its continuing unlawful annexation of Crimea. In 2015, the (former) Director of National Intelligence reported to Congress that the leading state intelligence threats to the United States will continue to come from two main countries, one of which is Russia. A recent human rights report from the U.S. State Department reflects the commission of significant human rights violations in Russia, including restrictions on political participation and freedom of expression, and the lack of due process in politically motivated cases (Item 5).

## Findings of Fact

Applicant is 45-year-old senior software engineer who has worked for the same defense contractor since 2009. He was born and raised in Russia, where he continued his education until 1994, when he earned the equivalent of a master of science in information technology. In 1999, he married a fellow Russian citizen, with whom he has two children, ages 17 and 12.

By 2000, Applicant had immigrated to the United States (U.S.) and found work as a team lead.<sup>2</sup> He became a naturalized United States citizen in 2014. Applicant considers himself a dual-citizen of the United States and Russia. While he recognizes the rights, privileges, benefits, and obligations of Russian citizenship, his obligation and allegiance is with the United States, which he terms as his “home.” He plans to meet all U.S. obligations over any obligations owed to Russia. (FORM, Item 4, at 1-2, 4) His wife and children, also dual citizens of the U.S. and Russia, reside with Applicant.

Applicant renewed his Russian passport in January 2015 in order to facilitate visits to his parents, who are citizens and residents of Russia. (FORM, Item 4, at 1) It is Applicant’s hope to be of assistance to his aging parents in their declining years. There is no evidence showing he has used that passport.<sup>3</sup> Applicant provides his mother with an unknown amount of financial support, and he plans to do so for the rest of her life.

---

<sup>2</sup> Applicant’s immigration year is deduced from the work history he provided in his security clearance application (SCA). (FORM, Item 3, at 12-17) Elsewhere in the SCA, Applicant volunteered 2013 as his date of entry into the United States. (FORM, Item 3, at 6) In a related question, he provided an answer possibly indicating he applied for naturalization “after 5 years since becoming [sic] permanent resident,” which fails to clarify his date of arrival. (FORM, Item 3, at 8)

<sup>3</sup> All of the documents related to Applicant in the FORM predate 2015, so Applicant’s international travel and passport use since that time is unknown.

Applicant's parents-in-law are Russian citizens who are presently living in the United States. (SOR Response) They are both in their 70s. This husband and wife work or worked for a Russian regional administration and a Russian-based academic entity, respectively.<sup>4</sup> It is unknown whether it is the couple's intent to continue residing in the United States or to pursue U.S. citizenship. Applicant and his wife have visited his in-laws in Russia in order to give their children the opportunity to know these grandparents. No other information regarding Applicant's in-laws was provided.

Applicant's brother is a citizen of Russia who is currently in the United States, where he is either living permanently, seeking U.S. citizenship, or visiting for an extended period. Applicant did not provide employment information for his sibling. It is unknown whether he is planning on remaining in the United States. No other information regarding this sibling was provided.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 in making a decision.

The protection of the national security is the paramount consideration. Under the AG, any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

---

<sup>4</sup> In his SOR Response, Applicant wrote that his in-laws were living in the United States. Previously, in his SCA, Applicant noted their U.S. address while referencing their employment with Russian employers. (FORM, Item 3, at 24-27) It is unclear whether these in-laws are now full-time U.S. residents.

relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## **Analysis**

### **Guideline C – Foreign Preference**

The security concern under this guideline is stated at AG 9:

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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The Government bases its intent to revoke Applicant's security clearance on his possession of an active Russian passport that he renewed in 2015. Applicant admits this allegation. It appears that the related allegations were posed to invoke one of the following disqualifying conditions:

AG ¶ 10(b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States, and

AG ¶ 10(c) failure to use a U.S. passport when entering or exiting the United States.

In this situation, there is no evidence indicating Applicant failed to report his Russian passport renewal. Moreover, there is no documentary evidence reflecting Applicant failed to use a U.S. passport when entering or exiting the United States. Consequently, no disqualifying conditions are raised under this guideline.

### **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. citizen to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant has natural ties of affection with multiple family members who are Russian citizens and residents of either Russia or the United States. He is obviously attached to his wife and their children, with whom he cohabitates, and his mother, for whom he provides an indeterminate amount of financial assistance. It may also be assumed he maintains normal familial attachments with his sibling and in-laws. I find disqualifying conditions AG ¶¶ 7(a), (b), and (e) potentially apply:

AG ¶ 7(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;

AG ¶ 7(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; and

AG ¶ 7(e) shared 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.

AG ¶ 8 provides three conditions that could possibly mitigate security concerns:

AG ¶ 8(a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States that

the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and

AG ¶ 8(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Like Applicant, his wife and children are dual citizens of Russia and the United States, safely residing in the U.S. with Applicant. While there is evidence reflecting that Applicant has emotional ties to his parents, brother, and in-laws, there is scant information regarding these individuals. For example, it is unclear whether Applicant's parents-in-law and brother have permanent residency in Russia or in the United States; there is limited information regarding his in-laws employers and employment; there is no information reflecting the employment status of Applicant's brother; and the record fails to disclose whether any of Applicant's Russian relations have a nexus with a foreign government or military, or receive income or benefits from a foreign power. In addition, there is limited information about Applicant's own life in the United States, other than the fact he considers the United States to be his "home." Given the considerations at issue in this guideline's mitigating conditions, I find that the deficiency of facts offered undermine a finding that any of those conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed in the AG. The final determination must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and conducted a whole-person analysis based on the record. In addition to Applicant's foreign relations, I considered factors such as his age, profession, education, employment, and family.

The facts offered with regard to Applicant's renewed Russian passport fail to sustain foreign preference security concerns. Applicant's family, particularly his parents, in-laws, and brother, however, sustain foreign influence security concerns. In these proceedings, an applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts to which he has admitted, and he has the ultimate burden of persuasion to obtain a favorable security decision. Here, Applicant failed in his burden. Consequently, I find Applicant failed to mitigate foreign influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1, Guideline C: | FOR APPLICANT     |
| Subparagraph 1.a:         | For Applicant     |
| Paragraph 2, Guideline B: | AGAINST APPLICANT |
| Subparagraph 2.a:         | For Applicant     |
| Subparagraphs 2.b-2.c:    | Against Applicant |
| Subparagraph 2.d:         | For Applicant     |
| Subparagraph 2.e-2.f:     | 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 a security clearance. Eligibility for access to classified information is denied.

---

Arthur E. Marshall, Jr.  
Administrative Judge