



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 15-06240
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert Blazewick, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

02/21/2018

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 25, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006. On June 8, 2017, the Security Executive Agent Directive 4 (SEAD 4) implemented new AGs which superceded the September 1, 2006 AGs. My conclusions would be the same under either AG.

Applicant responded to the SOR on December 1, 2016. He requested a hearing before an administrative judge. The case was originally assigned to another

administrative judge on March 7, 2017. It was assigned to me on May 22, 2017. The hearing was originally scheduled for September 20, 2017. On September 6, 2017, the hearing was continued until December 12, 2018. I convened the hearing as scheduled. Government Exhibits (Gov) 1-2 and Administrative Notice (Admin Not) I were admitted without objection. Applicant testified, called two character witnesses, and presented Applicant's A – V, which were admitted into evidence without objection. I received the hearing transcript (Tr.) on December 20, 2017.

### **Findings of Fact**

The SOR alleges security concerns based on Applicant's contacts with a cousin, who is a citizen of and resident of Russia. It also alleged that Applicant was a co-signer and had active power of attorney on multiple accounts in the U.S. belonging to his cousin. It was alleged that multiple transactions totaling approximately \$1,146,319 were conducted involving these accounts since 2001. Applicant admits the allegations, but does not recall making multiple transactions totaling \$1,146,319 since 2001. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 48 years old. He was born in Ukraine. At the time, Ukraine was part of the Union of Soviet Socialist Republics (USSR). In May 1992, Applicant and his family (his parents, sister, brother-in-law and their two children) moved to the United States. The U.S. government granted Applicant and his family refugee status because they were Jewish and Russia is known to mistreat its Jewish citizens. He became a U.S. citizen on August 11, 2008. Before immigrating to the U.S., Applicant served two years in the Soviet Army, a compulsory service required of all Russian citizens, from June 1987 to May 1989. When Applicant immigrated to the United States, he began taking English as a second language courses. After that, he enrolled in college. Applicant received a bachelor and master's degree from a U.S. university. Applicant has worked for his current employer, a DoD contractor since March 2014. He held an SCI security clearance from 2004 to 2008. He successfully passed a counter-intelligence polygraph in 2005. His access was discontinued because there was no need for him to have a security clearance. He never had any security violations when he had access to SCI. His company now has a need for him to have a security clearance. (Tr.29-32, 35-36, 40-41; Gov 1; Gov 2 at 3-4, 12-15; Answer to SOR, AE A; AE D – AE F)

Applicant met his wife in 2000. They married in 2003. His wife is a naturalized U.S. citizen. She was born in Moldova. She became a U.S. citizen in 1999. She works full-time as a teacher. They have three children, two sons, ages 11 and 8, and a daughter age 7. All were born in the United States. Their daughter has rare genetic disorder and has special needs. Applicant is grateful for the medical and educational services that his daughter receives in the U.S. She would not receive similar treatment in Ukraine. His sons attend local schools and are active in many sports and school activities. Applicant's parents, his in-laws, his sister and her family are U.S. citizens. They all live in the same metropolitan area where Applicant lives. The last time

Applicant visited Ukraine and Russia was in 1999. (Tr. 27-28, 44, 58; AE A; AE H; AE I; AE J; AE P)

Applicant's cousin, age 61, is a citizen of and resides in Russia. His cousin owns an oil and gas company. His cousin's family would visit Applicant's family when they resided in Ukraine. They have kept in contact. Applicant's contact with his cousin ranged from two to three times a month, to once every few months. Upon receiving the SOR, Applicant has reduced contact with his cousin. Since Applicant moved to the U.S., his cousin has traveled to the U.S. on at least five occasions to visit Applicant as well as his parents, and sister. His cousin's last visit occurred in 2010 when he and his daughter came to the U.S. to look at colleges. His daughter decided to attend college in London. She is looking into PhD programs in the U.S.. (Tr. 36-37, 51-56; Response to SOR)

Applicant's cousin does not trust the Russian government. He is concerned that the Russian government might take his money. There have been issues in the past where corrupt bank employees stole money from depositor's accounts and have not been prosecuted. Applicant's cousin opened a couple bank accounts in the U.S. and asked Applicant to have power of attorney (POA) over the accounts so he can access the money without traveling to the U.S. Applicant agreed to act as POA because he believes his cousin is an honest and legitimate businessman and his cousin is not involved in Russian politics. (Tr. 32, 41; Answer to the SOR; Gov 2)

As POA, Applicant primarily receives the bank statements and gives them to his cousin when he comes to visit. At one point, Applicant transferred \$40,000 to his cousin from one of the accounts so his cousin could purchase butter in Poland, to sell for a profit in Russia. Applicant's cousin closed the account, but has another account which Applicant serves as POA. During a background investigation interview in October 2014, the investigator asked Applicant about a \$139,000 cash withdrawal from his cousin's account between November 2003 and May 2004. Applicant was unaware of the withdrawal. He was also asked about the wiring of \$499,000 to Latvia. Applicant had no knowledge of this transfer. His cousin is wealthy, but he does not know the extent of his cousin's holdings. Applicant mentioned in the 1990s he purchased and shipped a car for his cousin using \$45,000 from his cousin's bank account. Applicant's cousin has withdrawn most of the money out of the accounts, but left the accounts open in case he needed to use them in the future. (Tr. 34, 60; Gov 2 at 7-8; Response to SOR)

Applicant does not receive any benefits from being POA. His cousin's daughter also has access to the bank accounts. Applicant believes his cousin can now transfer funds and make withdrawals from Russia. Applicant cannot be blackmailed about these accounts. Applicant states he has not been involved in any illegal or deceptive financial acts, such as money laundering, check or bank fraud, tax evasion, embezzlement, or structuring or altering deposits to avoid financial reporting requirements. (Tr. 34; Gov 2 at 8)

During the hearing, Applicant testified that once he learned it was a problem, he decided to withdraw acting as Applicant's POA. He cannot be removed as POA until his cousin removes him from the account the next time he is in the U.S. His cousin anticipates visiting the U.S. within the next six months and will revoke the POA. Applicant also disclosed that his cousin financed the purchase of Applicant's house. Applicant is attempting to refinance the house with a U.S. mortgage company. (Tr. 33-35, 45, 64; AE T, AE U)

Applicant owns two homes, his residence and the home where his parents live. All of his investments are located in the U.S.. He would not invest his money in Russia because of the government's level of corruption and disregard for people's property. He has no assets located overseas. He and his wife have U.S. passports. Applicant has worked and supported himself his whole life. He and his wife both have professional jobs, but live in a small house and within their means. Applicant's house is worth \$250,000. He has approximately \$10,000 in his checking account and \$70,000 in his savings account. His 401(k) has approximately \$480,000. His wife's account has approximately \$200,000. (Tr. 38-39; Response to SOR; AE M; AE N; AE S; AE V)

### **Whole-Person Factors**

Two of Applicant's co-workers testified during the hearing. Witness A attended graduate school with Applicant. They worked together early in their careers. Applicant went to work for another company. Applicant's company purchased Witness A's company so they now work for the same company. He states Applicant is trustworthy and hardworking. Applicant cares for a daughter with severe disabilities. He would trust Applicant with a security clearance. (Tr. 13-18)

Witness B works with Applicant. He has worked on the same projects with Applicant the last three or four years. Applicant does well on the job. He gets his work done and is always willing to help other people. He is aware of the concerns raised by Applicant having relatives who still live in Ukraine. He has no reservations about Applicant getting a security clearance. (Tr. 20-25)

Applicant also submitted several written letters of reference. Mr. C has worked in the defense industry and has held a security clearance for 11 years. He regularly receives Insider Threat training. He has no concern about Applicant's loyalty or reliability. He met Applicant three years ago when they were assigned to the same project. They continue to regularly consult with each other on various technical problems. Mr. C. is a student of history and grew up during the Cold War. He states Applicant has a strong allegiance to the United States. Applicant does not have a strong attachment to the Ukraine or the Soviet Union because of growing up Jewish in an anti-semitic culture. Applicant told him that he witnessed high levels of inefficiency, nationalism, and corruption. Applicant appreciates the U.S. because it has allowed him to have the opportunity to excel. He earned his bachelor's and master's in the U.S.. He has worked in the U.S. for over 20 years and is well-respected in the office. He provides

a good quality of life for his three U.S.-born children. He recommends Applicant for a security clearance. (AE K)

Mr. D has been Applicant's friend for over 15 years. He describes Applicant as "a loving husband, devoted and caring father, hardworking career-oriented professional." Applicant is the type of friend who is always willing to help no matter what burdens it might impose. Mr. E has lived across the street from Applicant for over six years. Applicant is a man who cares deeply for his family and is always willing to help a neighbor. Applicant and his family live modestly and do not live above their means. He is always thinking of what would be best to care for his special needs daughter. Mr. E says Applicant is honorable, is trustworthy, and a great family man. Several other friends and neighbors have written letters highly praising Applicant's character. (AE K)

Applicant is an active member of his synagogue and routinely donates blood to the Red Cross. (Tr. 26; AE Q; AE R)

### **Administrative Notice**

I have taken administrative notice of the following facts concerning Russia which were provided in Administrative Notice Document I:

Russia is one of the top two most aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly in cyberspace. Russian intelligence services target U.S. personnel with access to sensitive computer network information, seeking proprietary, sensitive, and classified information in a broad range of subject areas. One recent growing trend is the targeted recruitment of Russian immigrants with advanced technical skills who work for leading U.S. companies by Russian intelligence services.

Russia's foreign policy objectives clash with those of the United States, particularly Russia's occupation of territories within the sovereign nations of Georgia and the Ukraine. Russia's human rights record is poor. Russia's most significant human rights problems include restrictions on the ability to choose one's government and freedoms of expression, assembly, association, and the media; internet freedom; political prosecutions and administration of justice; and government discrimination against racial, ethnic, religious, and sexual minorities. The judiciary is subject to manipulation by political authorities. Abuses include attacks on journalists, physical abuse by law enforcement officers, harsh prison conditions, arbitrary detention, politically motivated imprisonment, electronic surveillance without judicial permission, and widespread corruption in the executive, legislative, and judicial branches. The Russian government failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity.

## 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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 national security eligibility will be resolved in favor of the national security."

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." The applicant 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 under this guideline is set out in AG ¶ 6 as follows:

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 United States has a compelling interest in protecting and safeguarding [sensitive] 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.”<sup>1</sup> 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. “An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a means through which the applicant can be subjected to coercion or exploitation.”<sup>2</sup>

Two disqualifying conditions under this guideline are relevant to this case:

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; and

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 or technology.

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<sup>1</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>2</sup> ISCR Case No. 11-12659 at 3 (May 30, 2013). See, e.g., ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

The mere possession of close family ties with a family member 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.

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, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship of Russia with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his cousin living in Russia does not pose a security risk.

While there is no evidence that intelligence operatives from Russia seek or have sought classified or economic information from or through Applicant, or his relatives living in Russia, it is not possible to rule out such a possibility in the future. Department Counsel produced substantial evidence to raise the issue of potential foreign influence.

AG ¶¶ 7(a) and 7(b) apply because of Applicant's relationship with his cousin who is a citizen and resides in Russia. Applicant communicates with his cousin on a regular basis every other month. It used to be more often. Applicant and his cousin have a close, personal relationship. His cousin would not have designated Applicant as POA on his bank accounts if he did not trust him. Applicant has not attempted to rebut this presumption. Given Russia's aggressive intelligence approach toward the United States, Applicant's relationships with his relatives living in that country are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion."

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns. Two apply to Applicant's case:

(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

AG ¶ 8(a) partially applies. Applicant's cousin does not hold a government position and does not have affiliations with the Russian government. It is unlikely that Applicant would be placed in a position of having to choose between his cousin's interests and those of the United States. I made my conclusions based on the evidence in the record and not on speculation about his cousin's motives. All of Applicant's immediate family, his wife, children, parents, and in-laws are citizens of and reside in the United States. Applicant's primary interests are his immediate family members.

AG ¶ 8(b) applies. Applicant has established "deep and longstanding relationships and loyalties in the U.S." He has resided in this country for over 25 years. When he first arrived, he attended classes to learn the English language. He attended undergraduate and graduate school in the U.S. He became a citizen in August 2008. He has built a successful career in the United States. He and his wife, also a naturalized U.S. citizen, married here and are raising their three children in the United States. He owns two homes and all of his assets are here. Applicant credits the United States with the opportunity to succeed. He would not have had as much opportunity if he stayed in Ukraine because of the society's anti-Semitic policies.

Most important, Applicant is grateful to the U.S. for the services and opportunities provided to his special needs daughter and his two sons. Applicant is not a fan of his home country or of Russia based on the level of corruption in both countries as well as their mistreatment of members of the Jewish faith. The evidence supports that Applicant has longstanding loyalties toward the United States and would resolve any conflict of interest in favor of the United States. Applicant mitigated the foreign influence security concerns associated with his contacts with his cousin, a citizen and resident of Russia.

### **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(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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant is well-regarded by his co-workers, neighbors, and friends. While he agreed to serve as POA to help out his cousin, he did not profit from this relationship. Once he learned that acting as POA on his cousin's bank accounts created a potential security concern, he took steps to be removed as his cousin's POA. The people he primarily cares for are his family and parents, all of whom are citizens of and reside in the United States. He appreciates the opportunities that living in the United States has granted him. He is an American success story. I am confident that Applicant's longstanding ties in the United States would result in him resolving any conflict in favor of the United States. Applicant 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Erin C. Hogan  
Administrative Judge