



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-02866  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

01/11/2018

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On November 29, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on December 19, 2016, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on March 30, 2017. It was reassigned to me on June 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 6, 2017, scheduling the hearing for July 26, 2017. The hearing was convened on that date. DOHA received the hearing transcript (Tr.) on August 2, 2017.

## **Evidentiary Rulings**

### **Evidence**

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) 1 through 26, which were admitted without objection.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about Russia. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that Russia is one of the two leading intelligence threats to U.S. interests. It conducted extensive espionage and other actions against the United States and other countries. It also has human rights problems; and it has been victimized by terrorism.

### **Findings of Fact**

Applicant is a 37-year-old research scientist working on a defense contract at a university. He has worked in that position since 2012. He was born in Russia. He has a bachelor's degree, which was awarded in Russia. He also has a master's degree and a PhD from a U.S. university. He is married without children.<sup>1</sup>

Applicant came to the United States in 2001 to pursue additional education. He grew to love the United States and the freedoms and opportunities it offered. He remained as a permanent resident, and he became a U.S. citizen in 2014. He renounced his Russian citizenship and surrendered his Russian passport. His wife is a native-born U.S. citizen.<sup>2</sup>

Applicant's mother, stepfather, and two stepsiblings are citizens and residents of Russia. His mother and stepfather married when Applicant was an adult. He has regular contact with his mother and through her, his stepfather. He only met his stepsiblings a few times, and he has had no contact with them in more than ten years. None of Applicant's family members have any direct connection to the Russian government. His mother and stepfather regularly travel to the United States. He hopes that his mother and stepfather will immigrate to the United States.<sup>3</sup>

Applicant used to own an apartment in Russia with his mother. He transferred his interest to his mother. He now has no assets or financial interests in Russia. His and his

---

<sup>1</sup> Tr. at 28-35; Applicant's response to SOR; GE 1, 2; AE 1, 2.

<sup>2</sup> Tr. At 28-31, 34-36; Applicant's response to SOR; GE 1, 2.

<sup>3</sup> Tr. at 28-29, 32, 34-37, 41-45, 52-53; Applicant's response to SOR; GE 1; AE 20.

wife's combined annual income is more than \$180,000. They own their home and have other investments. Their net worth in the United States is about \$885,000.<sup>4</sup>

Applicant has not returned to Russia since 2013. He expressed his undivided love for the United States, which he considers his home. He and his wife are ready to start a family. He votes in U.S. elections. He credibly testified that he would report any attempt to use his Russian family members against him. He reported two foreign countries' attempts to obtain sensitive but unclassified information.<sup>5</sup>

Applicant called two witnesses and submitted numerous documents and letters attesting to his academic achievements and his excellent job performance. He is praised for his high morals and ethics, honesty, judgment, maturity, trustworthiness, loyalty to the United States, reliability, professionalism, dedication, patriotism, and integrity.<sup>6</sup>

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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."

---

<sup>4</sup> Tr. at 33-34; Applicant's response to SOR; AE 14-18.

<sup>5</sup> Tr. at 32, 39-40, 45-52, 57; Applicant's response to SOR; AE 13.

<sup>6</sup> Applicant's response to SOR; AE 1-12, 20-25.

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 for foreign influence is set out in AG ¶ 6:

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

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

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

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

Applicant has family members who are citizens and residents of Russia. Russia is one of the two leading intelligence threats to U.S. interests. It conducted extensive espionage and other actions against the United States and other countries. It also has human rights problems; and it has been victimized by terrorism. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following is potentially applicable:

(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 interest in favor of the U.S. interest.

I considered the totality of Applicant's ties to Russia. 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. 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 operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen. None of his Russian family members have any direct connection to the Russian government. Applicant renounced his Russian citizenship. He has no plan to move back to Russia. His wife is a native-born U.S. citizen, and they are ready to start a family. He votes in U.S. elections. He expressed his undivided love for the United States, which he considers his home. People who know him attested to his patriotism.

I find that Applicant's ties to Russia are outweighed by his deep and long-standing relationships and loyalties in the United States. His closest family, life, home, assets, and professional career are in the United States. He credibly testified that he would report any attempt to use his Russian family members against him. He reported two foreign countries' attempts to obtain sensitive but unclassified information. I find that there is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. I also considered Applicant's credible testimony and strong character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude foreign influence security concerns are mitigated.

## **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
Subparagraphs 1.a-1.d:	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.

---

Edward W. Loughran  
Administrative Judge