



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



In the matter of:

ISCR Case No. 16-03116

Applicant for Security Clearance

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

03/26/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the security concerns related to her foreign passport, but failed to mitigate the security concerns arising from her continuing friends and family's connections in Belarus. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

**History of Case**

On January 15, 2016, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). On October 29, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines C (Foreign Preference) and 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 effective

within the DoD after September 1, 2006. On June 8, 2017, the new AG were implemented and are effective for decisions issued after that dated.<sup>1</sup>

Applicant answered the SOR on December 5, 2016, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1) On May 10, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant and received by her on May 22, 2017. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant timely submitted additional information in response to the FORM that I marked as Applicant Exhibit (AE) A. That response included a letter from her and handwritten corrections to Item 3, which is the summary of her May 27, 2016 and June 2, 2016 interviews with an investigator from the Office of Personnel Management (OPM), who prepared and submitted it as part of the Report of Investigation (ROI). Department Counsel had no objections to the corrections. Items 1, 2, 4 and 5 are admitted into evidence. AE A, which includes Item 3 with corrections, is admitted without an objection.

I took administrative notice of the facts concerning Belarus that are set forth in the Government's Request for Administrative Notice, which is marked as Item 5 and included in the record.

### **Findings of Fact**

Applicant admitted the allegations in the SOR. Those admissions are incorporated into the following findings of fact:

Applicant is 45 years old. She was born in Belarus. She attended high school and college there, graduating with a bachelor's degree in 1988. She immigrated to the United States in 1993 and was married here in 1999. She became a naturalized U.S. citizen in 2005. She has owned her own business since 2005. (Item 2)

Applicant has been a dual citizen of Belarus and the United States, since becoming a U.S. citizen in 2005. She has a valid Belarus passport that she recently renewed. She has used it to travel to Belarus multiple times prior to and subsequent to becoming a U.S. citizen in 2005. She travels there about twice a year for two to four weeks. She uses that passport to enter and exit Belarus because it makes the process easier. She has also used it to travel to Russia. She does not intend to relinquish her Belarusian passport. A review of her current U.S. passport confirmed that she used her U.S. passport to exit the United States some of the times she traveled to Belarus. There is insufficient evidence documenting what passport she used to re-enter the United States on her many trips abroad. (Items 1-4)

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<sup>1</sup> I considered the previous AG, effective September 1, 2008, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant's mother and father were born in Belarus. They now reside in the United States. Their citizenship status is unknown. Applicant has friends and cousins, aunts, uncles, nieces, and nephews who are citizens and residents of Belarus. She maintains contact with a couple friends, and visits them and her relatives when she visits Belarus every year. (Items 1-3)

I have taken administrative notice of facts contained in U.S. Government publications concerning Belarus, as outlined in Item 5, including the following: Belarus is an authoritarian government; it is a source and destination country for human trafficking; state-sponsored forced labor camps are prevalent; its judiciary is not independent; and it has a significant record for human rights violations and abuses. Belarus is also known to harbor terrorists, who plot attacks against other countries. Criminals in Belarus engage in cyber-attacks against the United States. The State Department warns U.S. citizens of the risks of travel there due to security forces abuses and arbitrary arrests. (Item 5)

### **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides, “Any determination under this order adverse to an applicant shall be a determination 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**

AG ¶ 6 expresses the security concerns regarding foreign influence:

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.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case. Two are potentially applicable:

(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;<sup>2</sup> and

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<sup>2</sup>The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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.

Belarus has an authoritative government that engages in human rights violations, has human trafficking, and harbors terrorists. Criminals target the United States through cyber attacks. U.S. citizens are warned about traveling there. These facts place a significant burden of persuasion on Applicant to demonstrate that her connections and relationships with family members and friends, who are resident citizens of Belarus, do not create a heightened risk of foreign influence or pose a security risk. Applicant's family relationships with numerous relatives, who are citizens and residents there, are ongoing. Applicant offered no evidence to the contrary with respect to those relationships. The evidence is sufficient to raise security concerns under AG ¶¶ 7(a) and 7(b), shifting the burden to Applicant to prove mitigation.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

(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 United States;

(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; and

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

Applicant did not demonstrate that it is unlikely that she could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States as a consequence of ongoing and long-term relationships with numerous family member and friends who reside in Belarus. In fact, she has consistently and frequently traveled to Belarus since becoming a U.S. citizen in 2005, and visited family and friends, indicating her close and ongoing connections to them. There is

no information addressing what, if any, direct connections her relatives or friends may have with the Belarusian government. There is insufficient evidence demonstrating that Applicant has deep and longstanding relationships and loyalties in the United States, such that if any conflict of interest arose, Applicant could be expected to resolve it in favor of U.S. interests. Accordingly, Applicant failed to establish mitigation with respect to those relationships under AG ¶¶ 8(a), (b), or (c).

### **Guideline C: Foreign Preference**

The Foreign Preference guideline in effect at the time the SOR was issued included potentially disqualifying conditions relating to the exercise of rights or privileges of foreign citizenship, and possession or use of a foreign passport. The new Guideline C criteria, which came into effect on June 8, 2017, and controls this national security eligibility determination, explicitly states that the exercise of any right or privilege of foreign citizenship (including holding a foreign passport) is not disqualifying without an objective showing that it is in conflict with U.S. national interests or the individual attempts to conceal such facts. Although possession of a foreign passport is no longer a disqualifying condition, AG ¶ 10(c) provides the “failure to use a U.S. passport when entering or exiting the U.S” is a disqualifying condition. Applicant admitted that she used her Belarusian passport to enter and exit Belarus and Russia, but there is insufficient evidence to prove that she used it when she exited and entered the United States for those trips. In fact, there is some evidence that she used her U.S. passport. Hence, no Guideline C foreign preference security concerns are raised or supported by substantial evidence in this case.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 facts and circumstances surrounding this case. The Guideline B security concerns do not

arise from any questionable conduct by Applicant, but rather circumstances that are normal results of her family situation. Applicant is a mature person, who has been a naturalized citizen since 2005. Minimal information is known about her immediate family, including her parents, who reside in the United States, or other connections she has here. There is no evidence or allegation that she has ever taken any action that could cause potential harm to the United States. However, her ongoing relationships with relatives and friends, who are resident citizens of Belarus, create significant and ongoing potential for pressure, coercion, exploitation or duress.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, I conclude Applicant did not meet her burden to mitigate the foreign influence security concerns raised by the facts of this case. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. National security eligibility is denied.

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SHARI DAM  
Administrative Judge