



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-00094
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2018

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 17, 2015. On February 28, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B and Guideline C (Foreign Preference). The DOD CAF acted 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 DOD on September 1, 2006.

Applicant answered the SOR on March 16, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on May 15, 2017. The case was assigned to me on December 4, 2017. On January 12, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 1, 2018. The hearing was convened as scheduled.

At the hearing, Government Exhibit (GE) 1 was admitted into evidence without objection. The Government's exhibit list was appended to the record as Hearing Exhibit (HE) I, and its request for administrative notice of relevant facts about the Russian Federation (Russia) as HE II. Applicant testified and submitted Applicant Exhibits (AE) A and B, which were admitted without objection. At Applicant's request, I left the record open until February 8, 2018. Applicant provided additional documents that were admitted into evidence as AE C through H, without objection. Applicant's post-hearing emails were appended collectively to the record as HE III. DOHA received the transcript (Tr.) on February 9, 2018.

On June 8, 2017, the DOD implemented new AG (2017 AG).¹ Accordingly, I have applied the 2017 AG.² However, I have also considered the 2006 AG, because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under the either version.

SOR Amendment

At the hearing, I granted the Government's motion, without objection, to amend the SOR to delete subparagraph 1.a of Guideline B, and the entire Guideline C allegation, including subparagraphs 2.a and 2.b.³

Findings of Fact⁴

Applicant, age 46, has two minor children, the elder from his first marriage of 13 years and the younger from his second marriage of 4 years. Applicant earned his bachelor's degree in 1996 from a university in Russia and his master's degree in 2008 from a U.S. university. He has worked as a network engineer for a U.S. information technology company since 2014. This is his first application for a security clearance. He has worked for U.S. companies since 1999, including as a federal contractor between 2005 and 2012.⁵

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD 4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD 4 ¶ B, *Purpose*). The SEAD 4 became effective on June 8, 2017 (SEAD 4 ¶ F, *Effective Date*). The new AG, which are found at Appendix A to SEAD 4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD 4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

³ Pleading: Government's Amendment to the SOR; AE A and B; Tr. at 10-12.

⁴ I extracted these facts from Applicant's SOR answer, his SCA (GE 1), his biography (AE B), and to other parts of the record as indicated by citation.

⁵ AE A, D, H; Tr. at 6-8, 22-25, 29, 30, 39-40.

Applicant immigrated to the United States from Russia in 1999 with his first wife, a U.S. citizen by birth, whom he met in Russia while she was an exchange student at his university. He became a naturalized U.S. citizen in 2003. Since then, he has voted in every local, state, and federal election. Both of his children are U.S. citizens by birth. His second wife, whom he sponsored for immigration to the United States, a Russian citizen by birth, became a naturalized U.S. citizen in 2017. She works as a nurse in a local hospital, and is pursuing an advanced nursing degree from a U.S. university.⁶

Applicant's 70-year-old mother, a Russian citizen, resides in Russia. She is a high-school teacher and a part-time school tutor, for which she collectively earns approximately \$400 per month. She also receives a \$300 monthly pension similar to U.S. social security. Applicant's father passed away two years ago and he has no siblings. His father worked for a chemical factory. Applicant has visited his mother in Russia (and his father before he passed away) at least once a year since he obtained his U.S. passport in 2003, and speaks to her every day by phone. His mother visits him in the United States approximately once a year. Applicant plans to sponsor his mother's immigration to the United States within the next three years.⁷

Applicant's 56-year-old mother-in-law (MIL) and his 58-year-old father-in-law (FIL) are Russian citizens residing in Russia. His MIL is retired from a factory as an accountant. His FIL is a truck driver for a construction company. He has visited his in-laws with his wife on three occasions between 2013 and 2017, during his visits to Russia to see his own mother. His wife speaks to his MIL everyday by phone, and with his FIL approximately twice per month by phone. Applicant generally speaks to his in-laws only on holidays and their birthdays. His FIL's physical work location is outside of the town in which he resides with his MIL. Therefore, his FIL only actual lives with his MIL during visits twice per year.⁸

Although not alleged in the SOR, Applicant's wife has a brother who is a Russian citizen, who resides in the same home with her parents and his two minor children. Her brother is divorced, and owns a small business (grocery store). His wife also has a grandmother who is a Russian citizen and resident, to whom she speaks with by phone approximately once a month. Her grandmother has never worked outside the home.⁹

Applicant and his wife have no intent to return to Russia, and consider the United States their permanent home. Applicant does not own any assets in Russia. He owns his home and maintains all of his assets in the United States, including life insurance, checking and savings accounts, and retirement and education savings plans. He received

⁶ GE 1 at 7, 19-25; AE A, B, and F; Tr. at 22-26, 29, 44-45.

⁷ AE A; GE 1 at 22-23; Tr. at 25-28, 30-31, 32, 33-34, 40-45, 51-54.

⁸ GE 2 at 23-25; Tr. at 28-29; 34-35, 46-49, 54.

⁹ Tr. at 47-48, 57.

an excellence award for his support of the U.S. federal judiciary in 2007. His current manager praised Applicant's work performance.¹⁰

Administrative Notice (Russia)

I have taken administrative notice of the U.S. Government's pronouncements concerning Russia, as outlined in HE II and the documents appended thereto, including the following:

- Russia has a highly centralized, authoritarian political system.
- Russia's human rights problems include restrictions on political participation and freedom of expression, assembly, and media; suppression of civil society; extensive official corruption; torture and excessive force by law enforcement officers. The government failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity.
- Russia continues to be a leading state intelligence threat to U.S. interests.
- Russia continues to target U.S. and allied personnel with access to sensitive computer network information.
- The many Russian immigrants with advanced technical skills who work for leading U.S. companies may be increasingly targeted for recruitment by Russian intelligence services.
- In 2010 and 2011, eleven individuals plead guilty to conspiring to serve as unlawful agents of Russia within the United States.
- Russia continues to take information warfare to a new level, working to fan anti-United States and anti-Western sentiment both within Russia and globally.
- In 2016, the U.S. intelligence community concluded that actions taken by Russia to interfere with the U.S. election process was part of a decade-long campaign of cyber-enabled operations directed at the U.S. government and its citizens.

Policies

"[N]o one has a 'right' to a security clearance."¹¹ As Commander in Chief, the President has the authority to "control access to information bearing on national security

¹⁰ AE A, and C through F; Tr. at 63-66.

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

and to determine whether an individual is sufficiently trustworthy to have access to such information.”¹² The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹³

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”¹⁴ Thus, a decision to deny a security clearance 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.¹⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁶ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁷ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain,

¹² *Egan* at 527.

¹³ EO 10865 § 2.

¹⁴ EO 10865 § 7.

¹⁵ See *Egan*, 484 U.S. at 531.

¹⁶ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁷ See ISCR Case No. 92-1106 at 3 (App. Bd. Oct. 7, 1993).

extenuate, or mitigate the facts.¹⁸ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁹

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²¹

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B (Foreign Influence) 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 following disqualifying conditions under this guideline are potentially relevant:

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.

¹⁸ Directive ¶ E3.1.15.

¹⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²¹ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

Applicant's ties to his mother, MIL, and FIL establish AG ¶¶ 7(a) and 7(b) based on the heightened risk associated with Russia, and the potential conflict of interest that arises from his connection to them. A heightened risk is associated with Russia, a highly centralized and authoritarian government, because it conducts espionage against the United States and has a poor human rights record.

The following mitigating condition under this guideline is established:

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 interest in favor of the U.S. interest.

Applicant maintains familial ties with his mother, MIL, and FIL. His wife also maintains familial ties with her brother and grandmother. Although none of these family members have specific affiliations with countries that would raise a concern, there is heightened risk associated with the country of Russia that forms the basis of a concern regardless of any such affiliations.

Applicant chose to make the United States his permanent home almost 19 years ago and has no plans to return to live in Russia. His wife and two children are U.S. citizens by birth. All of his assets are in the United States, including his home. Applicant pursued his postgraduate degree from a U.S. university, and has had a successful career working for U.S. companies, including federal contractors, since he immigrated to the United States. He plans to sponsor his mother, who visits him annually in the United States, for her immigration to the United States within the next three years. Despite his familial ties to Russia, his much deeper ties are in the United States. I conclude that Applicant would resolve any conflict of interest in favor of the U.S. interest. Accordingly, Applicant has met his heavy burden to mitigate the Government's Guideline B concerns.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I weighed the disqualifying and mitigating conditions under Guideline B, and evaluated all the evidence in the context of the whole person and the heightened risk associated with Russia. I conclude that Applicant has mitigated security concerns raised by his familial ties to citizens and residents of Russia. Accordingly, I conclude that he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.b – 1.c: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge