



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00571

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

07/02/2018

**Decision**

Harvey, Mark, Administrative Judge:

Applicant mitigated Guideline B (foreign influence) security concerns relating to his connections to his sister who lives in Israel; however, security concerns arising from his mother-in-law living in Russia are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 9, 2015, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On April 27, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

(Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under Guideline B.

On January 3, 2018, Applicant responded to the SOR and requested a hearing. (HE 3) On January 25, 2018, Department Counsel was ready to proceed. On March 20, 2018, the case was assigned to me. On January 10, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 15, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered two exhibits; Applicant offered seven exhibits; and all proffered exhibits were admitted into evidence. (Tr. 15-24, 69; GE 1-2; Applicant Exhibit (AE) A-G) On February 26, 2018, DOHA received a copy of the transcript of the hearing.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Procedural Rulings**

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant's connections to the Russian Federation (Russia) and Israel. (Tr. 16-19) Applicant did not object to me taking administrative notice of facts concerning Russia; however, I sustained his objection to facts in the Israel request for administrative notice relating to countries other than Israel. (Tr. 16-19) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Department Counsel's requests for administrative notice are granted, subject to the exception previously noted concerning Israel. (Tr. 19) Portions of the request are quoted without quotation marks and footnotes in the Russian Federation and Israel sections, *infra*.

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/SEAD4\\_20170608.pdf](http://ogc.osd.mil/doha/SEAD4_20170608.pdf).

## Findings of Fact<sup>2</sup>

Applicant's SOR response denied all of the SOR allegations. He also provided mitigating information. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 60-year-old engineer. (Tr. 6; GE 1) He has performed sensitive, highly-technical work at a laboratory since 2008. (Tr. 45-46; GE 1) In 1991, he married, and his children are ages 25 and 30. (Tr. 6; SOR response) In 1974, he graduated from high school, and in 1979, he received a bachelor's degree in the Soviet Union. (Tr. 7-8) In 1981, he received a master's degree in the Soviet Union. (Tr. 7-8)

## Foreign Influence

Applicant was born in the Soviet Union. (Tr. 25) The place where he was born is not part of the Russian Federation. (Tr. 25) After he received his master's degree, he worked in a medical education facility for more than seven years in the Soviet Union. (Tr. 26-27) He has not served in the U.S. military or any foreign military. (GE 1)

In 1989, Applicant immigrated to the United States. (Tr. 8, 29-30) He said he renounced his Soviet citizenship in 1989 when he left the Soviet Union. (Tr. 30; SOR response) In 1994, he became a U.S. citizen. (Tr. 8) He underscored his and his family's loyalty to the United States as indicated in their oaths of allegiance. (Tr. 67; SOR response; AE F) The Naturalization Oath of Allegiance to the United States of America states:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.<sup>3</sup>

Applicant's wife, stepson, and mother-in-law are dual citizens of Russia and the United States. (GE 1; SOR ¶ 1.a) Applicant's spouse was born in the Soviet Union in

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<sup>2</sup> The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

<sup>3</sup> The language of the current Oath of Allegiance is found in the Code of Federal Regulations Section 337.1 and is closely based upon the statutory elements in Section 337(a) of the Immigration and Nationality Act. U.S. Citizenship and Immigration Services, 8 U.S.C. § 1448, <https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>.

1956. (GE 1) He met his wife in the United States, and they married in the United States. (Tr. 30) He emphasized that he loves his wife dearly. (Tr. 72) She was naturalized as a U.S. citizen in 2000. (SOR response)

Applicant's stepson was born in Russia in 1987, and he became a U.S. citizen when his mother was naturalized in 2000. (Tr. 30-31; GE 1; SOR response) His stepson lives in the United States. (GE 1) His daughter was born in the United States. (Tr. 33) His most recent visit to Russia was as a tourist in 2005. (Tr. 33, 65) His spouse maintains a Russian passport. (Tr. 35)

Applicant's mother-in-law is 94 years old; she was born in the Soviet Union; and she lived with Applicant in the United States until recently when she returned to Russia. (Tr. 52; GE 1) She planned to return to the United States a few weeks after Applicant's hearing. (Tr. 52) In 2012, she became a U.S. citizen. (SOR response) She is handicapped and would have difficulty if she stays alone in Russia. (SOR response) She previously traveled from the United States and stayed in the family apartment in Russia in 2016. (SOR response)

Applicant's spouse and stepson co-own an apartment in Russia with an approximate value of \$50,000. (Tr. 53; GE 1; SOR ¶ 1.c) Applicant's mother-in-law stays in the apartment when she is in Russia. (Tr. 52) Applicant's family does not own the land where the apartment is located. (Tr. 52) The apartment is not rented when Applicant's family members are not staying there. (Tr. 53) Applicant believes the apartment may not be worth \$50,000. (Tr. 56) Applicant's family does not want to divest their ownership of the apartment because his mother-in-law has occasionally lived in it since 1960. (Tr. 55) She is emotionally attached to it.

Applicant's spouse receives a monthly retirement benefit from Russia valued at about \$80 a month. (Tr. 58; GE 2; SOR ¶ 1.d) Applicant considered the payment to be a petty amount; however, he wanted to continue to receive it as "a small revenge" or punishment for Russia to have to pay it. (Tr. 58) Applicant resents the way the Soviet Union treated his parents, who have passed away. He stressed his lack of sympathy for the Russian government.

Applicant's sister is a citizen and resident of Israel. (Tr. 36-37; SOR ¶ 1.b) She is 67 years old. (Tr. 42) In 1991, she immigrated to Israel. (Tr. 38) Her son lives in Canada. (Tr. 39) He has weekly to monthly contact with her. (GE 1; GE 2) She visited Applicant in the United States in the past year. (Tr. 41) The Israeli Government does not employ her. (Tr. 42) The last time Applicant visited Israel was in 2005. (Tr. 66)

Applicant does not own any property in Israel or Russia. (Tr. 59) Applicant's net worth in the United States totals about \$1,200,000. (Tr. 59-61) Applicant's spouse, daughter, mother-in-law, and children are all U.S. citizens. (Tr. 62)

Applicant is very careful about the accuracy of security information. He corrected the spelling of a city in the Office of Personnel Management personal subject interview and noted some other mistakes in documentation. (Tr. 16-19, 36-38; AE G; GE 2)

## Character Evidence

Applicant served as a U.S. election judge. (Tr. 51) Applicant received several certificates for his engineering contributions to an important U.S. Government entity. (AE B) He received four patents. (AE C) His engineering team won a prize in 2014 for fiscal year 2013. (AE D) His resume shows an exceptional history of scientific and engineering achievements. (AE E)

## Israel<sup>4</sup>

Israel is a vibrant parliamentary democracy with a modern economy. Despite the instability and armed conflict that have marked Israel's relations within the region since it came into existence, Israel has developed a robust, diversified, and technologically advanced market economy. The relationship between Israel and the United States is friendly and yet complex. Since 1948, the United States and Israel have a close friendship based on common democratic values and security interests. Successive U.S. Administrations and Congresses have demonstrated a commitment to Israel's security and to maintaining close bilateral ties. Israel is considered a critical ally and friend of the United States. Israel is a leading recipient of U.S. foreign aid and is a frequent purchaser of major U.S. weapons systems.

Israel and the United States do not have a mutual defense agreement, although the United States remains committed to Israel's security and well-being, predicated on Israel maintaining a "qualitative military edge" over other countries in its region. Strong U.S. congressional support for Israel resulted in the country being designated as a "major non-NATO ally" in 1989 and receiving preferential treatment in bidding for U.S. defense contracts and access to expanded weapons systems at lower prices. Significant cooperation exists in military aid, arms sales, joint exercises, and information sharing.

The interests of the two countries are not always aligned. Sales of U.S. defense articles or services to Israel and other foreign countries is subject to the provisions of the Arms Export Control Act, which predicates eligibility for purchase on agreements not to use purchased items or training for purposes other than those permitted by the act or to transfer them to third-party countries (except under certain conditions) without the prior consent of the U.S. President. The United States has acted to restrict aid and/or rebuked Israel in the past for possible improper use of U.S.-supplied military equipment. There is a significant history of classified information and controlled technologies being illegally imported by Israel or by private companies for Israel. These include parts used in fighter jets; spy and encryption software; components for HAWK missiles; military radars; digital oscilloscopes capable of being utilized in the development of weapons of mass destruction and in missile delivery fields.

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<sup>4</sup> In addition to the materials cited in Department Counsel's request for administrative notice, some facts discussing positive aspects of the relationship between Israel and the United States are from U.S. State Department website, *U.S. Relations With Israel, Bureau of Near Eastern Affairs Fact Sheet* (May 14, 2018), <https://www.state.gov/r/pa/ei/bgn/3581.htm>, and *Israel Background*, <https://www.state.gov/p/nea/ci/is/>.

The security situation remains complex in Israel and the West Bank. Gaza remains under the control of HAMAS, a U.S.-designated foreign terrorist organization. The U.S. State Department advises U.S. citizens to exercise increased caution in Israel due to terrorism. U.S. citizens are warned about travel to the Gaza Strip and the West Bank because of terrorism, civil unrest, possible armed conflict, and potentially violent civil unrest. Terrorist attacks in Israel continue to be a concern. All persons entering or departing Israel are subject to immigration and security screening, including prolonged questioning and physical searches, and may be denied entry or exit. Additionally, carrying audio-visual or data storage/processing equipment may lead to additional security delays. Some travelers have had their laptop computers and other electronic equipment searched at airports. On occasion, Israeli security officials have requested access to travelers' personal email accounts or other social media accounts as a condition of entry.

Israel has been and is a close ally of the United States, especially in military matters and diplomacy. The United States has shared complex commercial and military technology with Israel and vice versa.

## **Russian Federation<sup>5</sup>**

Russia is a vast and diverse federation with a total population around 143 million. Russia achieved independence with the dissolution of the Soviet Union in August 1991. Russia inherited the Soviet Union's permanent seat on the United Nations Security Council, most of its military assets, and the bulk of its foreign assets and its debts. Russia retained a powerful military and remains a nuclear superpower. Russian political power is concentrated in the executive branch, primarily in the president and prime minister. Its weak multiparty political system is dominated by the pro-government United Russia party and a bicameral legislature consisting of the State Duma (lower house) and Federation Council (upper house).

As of 2016, the leading state intelligence threats to U.S. interests continued to be Russia and China, based on their capabilities, intent, and broad operational scope. Russian intelligence services continue to target U.S. and allied personnel with access to sensitive computer network information. Russia seeks data on advanced weapons systems and proprietary information from U.S. companies and research institutions that deal with energy, finance, the media, defense, and dual use technology. Russia is assuming a more assertive cyber posture based on its willingness to target critical infrastructure systems and conduct espionage operations even when detected and under increased public scrutiny. Russian cyber operations are likely to target U.S. interests to support several strategic objectives: intelligence gathering to support Russian decision making in the Ukraine and Syrian crises, influence operations to support military and political objectives, and continuing preparation of the cyber environment for future contingencies. . . . Non-cyberspace collection methods include targeting of U.S. visitors overseas, especially if the visitors are assessed as having access to sensitive information.

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<sup>5</sup> In addition to the materials cited in Department Counsel's request for administrative notice, some facts discussing positive aspects of the relationship between Russia and the United States are from the Department of State, *Background Notes Russia* (April 30, 2009), available at <http://www.state.gov/outofdate/bgn/russia/143281.htm> (Tr. 38-40).

Two trends that may increase Russia's threat over the next several years is that (1) many Russian immigrants with advanced technical skills who work for leading U.S. companies may be increasingly targeted for recruitment by the Russian intelligence services, and (2) a greater number of Russian companies affiliated with the intelligence services will be doing business in the United States.

Russia's extensive and sophisticated intelligence operations are motivated by Russia's high dependence on natural resources, the need to diversify its economy, and the belief that the global economic system is tilted toward the U.S. at the expense of Russia. As a result, Russia's highly capable intelligence services are using human intelligence (HUMINT), cyber, and other operations to collect economic information and technology to support Russia's economic development and security. For example, Russian intelligence collectors may pursue non-public data on topics such as interest rate policy to support its policymakers' efforts to advance the role of its currency and displace the U.S. dollar in international trade and finance.

On June 28, 2010, the U.S. Department of Justice announced the arrests of 10 alleged secret agents for carrying out long-term, "deep-cover" assignments on behalf of Russia. Within weeks, all ten defendants pled guilty in federal court, and were immediately expelled from the United States. . . . On October 3, 2012, an indictment was unsealed in the U.S. District Court for the Eastern District of New York charging 11 members of a Russian military procurement network operating in the United States and Russia, as well as a Texas-based export company and a Russia-based procurement firm, with illegally exporting high-tech microelectronics from the United States to Russian military and intelligence agencies. On January 17, 2013, a Pennsylvania man was sentenced to 42 months in prison for actions that resulted in at least 50 unlicensed exports of national security sensitive items to several foreign countries, including Russia. On January 26, 2015, criminal charges were filed against an agent of Russia's foreign intelligence agency who was operating in the U.S. under "non-official cover" without prior notification to the U.S. Attorney General. Two other official representatives of Russia were criminally charged for attempting to recruit U.S. residents as intelligence sources for Russia, tasking the covert agent to gather intelligence, and transmitting intelligence reports prepared by the covert agent back to Russia. In June 2015, a naturalized U.S. citizen born in Moscow plead guilty to illegally obtaining and smuggling more than \$65 million worth of sensitive electronics components from the U.S. to Russian businesses that supply Russia's Defense Ministry, Security Service, and entities involved in the design of nuclear warheads, weapons, and tactical platforms.<sup>6</sup>

Russia continues to take information warfare to a new level, working to fan anti-U.S. and anti-Western sentiment both within Russia and globally. Moscow will continue to publish false and misleading information in an effort to discredit the West, confuse or distort events that threaten Russia's image, undercut consensus on Russia, and defend Russia's role as a responsible and indispensable global power. Russia has developed a ground-launched cruise missile that the U.S. has declared is in violation of the Intermediate-Range Nuclear Forces (INF) Treaty.

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<sup>6</sup>There is no evidence that Applicant, his spouse, or her family in Russia are involved in or connected with any criminal activity on behalf of Russia.



The most significant human rights problems of 2016 in Russia involved the following: restrictions on the ability to choose one's government and freedoms of expression, assembly, association, and the media, as well as internet freedom; political prosecutions and administration of justice; and government discrimination against racial, ethnic, religious, and sexual minorities. Other problems included allegations of torture and excessive force by law enforcement officials that sometimes led to deaths, executive branch pressure on the judiciary, electoral irregularities, and extensive official corruption. The government failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity.

The law prohibits officials from entering a private residence except in cases prescribed by federal law or when authorized by a judicial decision. The law also prohibits the collection, storage, utilization, and dissemination of information about a person's private life without his or her consent. While the law previously prohibited government monitoring of correspondence, telephone conversations, and other means of communication without a warrant, the "Yarovaya package" of amendments to antiterrorism laws came into effect on July 20, 2016. These amendments grant authorities sweeping new powers and require telecommunications providers to store all electronic and telecommunication data, including telephone calls, text messages, images, and videos, for six months.

Violence continued in the North Caucasus republics. There are continued reports that use of indiscriminate force by security forces resulted in numerous deaths or disappearances and that authorities did not prosecute the perpetrators. Government personnel, militants, and criminal elements continued to engage in abductions in the North Caucasus. In March 2014, Russia attempted to annex sovereign Ukrainian territory, disrupting years of international order and drawing the condemnation of free, democratic societies across the globe. The Crimean Peninsula remains part of Ukraine despite Russia's illegal occupation. The U.S. does not, nor will it, recognize Russia's attempted annexation and calls on President Putin to end his country's occupation of Crimea. Since the crisis began in Ukraine in 2014, Moscow has redoubled its efforts to reinforce its influence in Eurasia. Events in Ukraine raised Moscow's perceived stakes for increasing its presence in the region to prevent future regime change in the former Soviet republics and for accelerating a shift to a multipolar world in which Russia is the uncontested regional hegemon in Eurasia. Moscow will therefore continue to push for greater regional integration, raising pressure on neighboring states to follow the example of Armenia, Belarus, Kazakhstan, and Kyrgyzstan and join the Moscow-led Eurasian Economic Union.

In March 2017, the U.S. reaffirmed its commitment to Ukraine's sovereignty and territorial integrity. The U.S. does not recognize Russia's "referendum" of March 16, 2014, nor Russia's attempted annexation of Crimea and continued violation of international law. Russian occupation "authorities" suppress dissent and where ethnic and religious minorities -- especially Crimean Tatars and ethnic Ukrainians -- face serious and ongoing repression. Nongovernmental organizations and independent media are still being silenced or driven out, and international observers are still denied access to the peninsula. The U.S. calls on Russia to cease its attempts to suppress freedom of expression,



peaceful assembly, association, and religion. Sanctions related to Crimea will remain in place as long as the occupation continues.

In January 2017, the U.S. stated that it was deeply concerned with the recent spike in violence in eastern Ukraine, including Organization for Security and Cooperation in Europe (OSCE) reports of heavy artillery and other weapons proscribed by the Minsk agreements. The U.S. stated that the fighting has caused dozens of Ukrainian military casualties and 10 civilian casualties, and has left 17,000 civilians, including 2,500 children, without water, heat, or electricity. To avert a larger humanitarian crisis, the U.S. called for an immediate, sustained ceasefire and full and unfettered access for OSCE monitors.

Russia is considered to be at a high risk of local, regional, and international terrorism threats/concerns. On September 30, 2015, Russia initiated military operations in Syria. In response, the Islamic Group of Iraq and the Levant (ISIL) and affiliated terrorist organizations have issued threats vowing retaliatory terrorist attacks in Russia. The Russian Federal Security Service (FSB) reported no terrorist attacks in the Russian Federation in 2015. However, on October 31, 2015, a Russian charter plane exploded in mid-air over Egypt due to an improvised explosive device on board. All 224 people - including 219 Russian nationals -- on board were killed. Russian authorities, in addition to the U.S. and U.K., determined the incident was an act of terrorism.

In October 2016, the Department of Homeland Security (DHS) and Office of the Director of National Intelligence (ODNI) issued a Joint Statement on Election Security, stating that the U.S. Intelligence Community was confident that the Russian government directed recent compromises of e-mails from U.S. persons and institutions, including from U.S. political organizations, and that the disclosures of alleged hacked e-mails on sites like DCLeaks.com and WikiLeaks are consistent with the Russian-directed efforts. The Joint Statement also noted that the Russians have used similar tactics and techniques across Europe and Eurasia to influence public opinion there.

In December 2016, the DHS, ODNI, and FBI released a Joint Analysis Report (JAR) which further expanded on the DHS and ODNI Joint Statement dated October 2016, by providing details of the tools and infrastructure used by Russian intelligence services to compromise and exploit networks and infrastructure associated with the recent U.S. election, as well as a range of U.S. government, political and private sector entities. The JAR stated that activity by Russian intelligence services has been part of a decade-long campaign of cyber-enabled operations directed at the U.S. Government and its citizens, including spear phishing, campaigns targeting government organizations, critical infrastructure, think tanks, universities, political organizations, and corporations; theft of information from these organizations; and the recent public release of some of this stolen information. The report found that in other countries, Russian intelligence services have undertaken damaging and disruptive cyber-attacks, including on critical infrastructure, in some cases masquerading as third parties or hiding behind false online personas designed to cause the victim to misattribute the source of the attack. In December 2016, the U.S. declared *persona non grata* 35 Russian officials operating in the U.S. who were acting in a manner inconsistent with their diplomatic or consular status.

The U.S. also informed the Russian government that it would deny Russian personnel access to two recreational compounds in the U.S. owned by the Russian government. The U.S. took these actions as part of a comprehensive response to Russia's interference in the U.S. election and to a pattern of harassment of U.S. diplomats overseas that has increased over the last four years, including a significant increase in the last 12 months.

Russia and the United States are occasionally aligned on political initiatives and have joined in numerous international agreements, including efforts to resolve international political problems at the United Nations. For example, the United States and Russia entered into a bilateral World Trade Organization accession agreement in 2006. Russia imports U.S. goods valued at several billion dollars. Russia and United States are allies in the war on terrorism, and both seek to suppress the proliferation of weapons of mass destruction. Both countries have emphasized the reduction of strategic arsenals. The United States has spent billions of dollars in "Nunn-Lugar" funds and related programs to assist Russia with dismantling nuclear weapons and ensuring security of its nuclear weapons, weapons grade material, and other weapons of mass destruction. Russia has attempted to use its significant oil and gas exports as sources of political influence. In July 2009, President Obama and then Russian President Medvedev established a Bilateral Presidential Commission dedicated to improving coordination between the two countries, identifying areas of cooperation, and pursuing joint projects that strengthen strategic stability, international security, economic well-being, and the development of ties between the Russian and American people.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 has four conditions that could raise a security concern and may be disqualifying 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;
- (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;
- (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; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

SOR ¶ 1.b alleges that Applicant's sister is a citizen and resident of Israel and his relationship with her causes a security concern. Applicant admits frequent contacts<sup>7</sup> with his sister in Israel. He has not traveled to Israel since 2005. His sister visited Applicant in the United States in the previous year. Applicant is bound to his sister by mutual affection.

Applicant's stepson is a dual citizen of the United States and Russia. (SOR ¶ 1.a) His stepson lives in the United States. There is no evidence of his stepson's travel to Russia or connections to Russia, other than his Russian citizenship. This part of SOR ¶ 1.a is not substantiated as a security concern.

Applicant's spouse has a financial connection to Russia through the apartment she owns with her son and her Russian pension. (SOR ¶¶ 1.c and 1.d) She maintains a Russian passport, and at the time of the hearing, her mother was visiting Russia and staying in the apartment.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

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<sup>7</sup> The Appeal Board has concluded that contact every two months or more constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

There are widely documented safety issues for residents of Russia because of terrorists, criminals, and unlawful acts by the Russian government. The mere possession of close family ties with relatives or in-laws living in Russia is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person 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. See ISCR Case No. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).<sup>8</sup>

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This presumption is established for Applicant through his spouse because of her relationship with her mother.

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important consideration is the nature of a nation's government's relationship with the United States. These factors are relevant in assessing the likelihood that an applicant's family members living in that country 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, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Russia with the United States, and the situation in Russia places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in Russia or visiting Russia does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Russia.<sup>9</sup>

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<sup>8</sup> In accordance with "well established DoD policy [Applicant and his family's] religious affiliation play[ed] no part" in this decision. ISCR Case No. 08-06795 at 6 n. 3 (App. Bd. May 25, 2012).

<sup>9</sup> The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at \*20-\*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security concerns because those ties and

Guideline B security concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified 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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at \*11-\*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from Russia seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Russia, like many countries, has a problem with terrorism. Applicant’s mother-in-law was in Russia at the time of his hearing, and she may visit or live in Russia in the future. She “could be a means through which Applicant comes to the attention of those who seek U.S. information and technology and who would attempt to exert coercion upon him.” ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant’s relationships with relatives who may be living in Russia or visiting Russia create a potential conflict of interest because Russian intelligence services could place pressure on his family in Russia in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Department Counsel produced substantial evidence of Applicant’s relationship with family in Russia and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), 7(e), and 7(f) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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 United States;

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contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant’s immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person’s immediate family members -- regardless of whether the person’s family members are prominent or not.

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(b) apply to all security concerns except for his relationship with his spouse and through her to his mother-in-law who was in Russia at the time of his hearing and may return to Russia in the future. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S."

In 1989, Applicant immigrated to the United States, and in 1994, he became a U.S. citizen. He owns property in the United States, and he does not own property in Russia. Applicant's years of support to the scientific community in the United States as a top-tier engineer, including his contributions to the United States, weigh heavily towards



mitigating foreign influence security concerns. Applicant wishes to continue to contribute to the United States. He has shown his patriotism, loyalty, and fidelity to the United States during his years of support to the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his spouse, and her relationship with her mother, who was in Russia during his hearing and may visit Russia in the future. Applicant's mother-in-law, when she is in Russia, continues to be at risk primarily from Russian intelligence agents. Applicant and his relatives, if they live in or visit Russia, are potential targets of Russian intelligence agents. Applicant's potential access to classified information could theoretically add risk to his relatives living in or visiting Russia.

AG ¶ 8(f) fully mitigates the security concern arising from Applicant's spouse's pension, and Applicant's spouse and stepson's interest in an apartment in Russia. In comparison to Applicant's net worth in the United States of about \$1,200,000, his indirect financial interests in Russia are *de minimis*. SOR ¶¶ 1.c and 1.d are mitigated.

In sum, Applicant's connections through his spouse to his mother-in-law raise serious security concerns because of Russia's aggressive foreign policy, use of intelligence agents to target the United States, and violations of the rule of law. This serious security concern outweighs the mitigating information in his case. Guideline B security concerns are not mitigated.

### **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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 60-year-old engineer who has performed sensitive, highly-technical work in the United States. He was educated through the master's degree level in the Soviet Union. He contributed for many years to the U.S. scientific community. He served as a U.S. electoral judge, and he did not accept payment for his voluntary service. He received several certificates for his engineering contributions to an important U.S. Government entity, and he was awarded four patents. His engineering team won a prize. His resume shows an impressive history of scientific and engineering accomplishment.

Applicant has strong connections to the United States, and his loyalty to the United States is not in question. In 1989, Applicant immigrated to the United States, and in 1994, he became a U.S. citizen. His spouse, mother-in-law, and children are U.S. citizens. He owns property in the United States, and his net worth in the United States is about \$1,200,000. When he became a U.S. citizen, he took an oath of allegiance to the United States. His employment for 34 years has been in the United States.

A Guideline B decision concerning Russia must take into consideration the geopolitical situation and dangers there.<sup>10</sup> Russia is a dangerous place because of violence from terrorists and criminals. Russian intelligence agents are some of the most aggressive in the world at targeting U.S. interests. The Russian government does not fully comply with the rule of law or protect civil liberties in many instances. The United States and Russian governments have made several agreements in areas of mutual interests.

The evidence against granting access to classified information is more persuasive. Applicant loves his spouse; his spouse is close to her mother; and her mother was in Russia at the time of his hearing. Her mother may visit Russia in the future. When her mother is in Russia, she is vulnerable to possible pressure and coercion, which Russian authorities could use to pressure Applicant's spouse, and through her, Applicant. Applicant should not be placed into a position where he could be subjected to such pressure and coercion.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are not 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b, 1.c, and 1.d:	For Applicant

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<sup>10</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

## **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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge