



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



In the matter of:)	
)	
REDACTED VERSION)	ISCR Case No. 11-10903
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to mitigate foreign influence security concerns raised by his prior Russian military service, his then possession of a Russian clearance, and having immediate family members who are citizens and residents of Russia. Clearance is denied.

Statement of the Case

Applicant provided an affidavit on February 17, 2011; submitted a security clearance application (SCA) on September 1, 2015; was interviewed by a government investigator on October 21 and 23, 2015; and responded to interrogatories on May 21, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on June 24, 2017, alleging security concerns under Guideline B (foreign influence). Applicant answered the SOR on July 14, 2017, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), submitting the evidence supporting the security concerns, was provided to Applicant by letter dated August 11, 2017. Applicant received the FORM on August 29, 2017. He was allowed 30

days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. The Defense Office of Hearings and Appeals (DOHA) received Applicant's response to the FORM (a one-page statement with five exhibits) on September 5, 2017. The case was assigned to me on December 12, 2017. There were no objections raised by either party, and I admitted and made part of the record all of the proffered documents.

Procedural Ruling

Department Counsel requested I take administrative notice of facts concerning Russia. (FORM, Item 5) There were no objections, and I took administrative notice as requested. The noted facts are in the administrative notice request and will not be repeated here. Some of the more important facts were noted in the decision (*infra*).

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.b, 1.f, and 1.h through 1.k. He denied the allegations in ¶¶ 1.c through 1.e, and 1.g. His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 53-year-old research electronics and software engineer. At the time of his 2015 SCA, he was working part time for a federal contractor while seeking clearance eligibility required for employment with a second federal contractor. He worked full time for a third federal contractor between 2000 and 2012. The U.S. Department of Homeland Security gave him access to confidential information in 2003. Applicant established his own business in 2007, and has worked part time on his business between 2007 and present.

Applicant was born, raised, and educated in Moscow, Russia. He joined the Soviet Union Army to achieve his educational goals. He served as an officer in the Soviet Army from 1982 to 1993. During his military service, the Soviet Army paid for his education. He completed bachelor's and master's degrees in 1987, and a postgraduate degree in 1993. Applicant, and the educational and research institutes he attended, were under the control of the Soviet's military intelligence agency, and his work had intelligence and military applications. He held supervisory and leadership positions over fellow military and civilian researchers. While in the research institute, Applicant received three patents, two of which were financed by the Soviet Army.

The Soviet Army investigated Applicant's background in 1982, and granted him a secret clearance. After the dissolution of the Soviet Union, Applicant resigned his position as an officer and "joined the civilian part of the field." He stated that he never swore allegiance to the Russian Federation Army.

Applicant entered the United States in 1995, and became a naturalized U.S. citizen in 2009. He maintains frequent telephonic and computer contact with his

relatives living in Russia and with his mother-in-law. Since immigrating to the United States, Applicant has frequently travelled to Russia for extended periods (between seven to thirty days) to visit family and friends. He visited Russia in 2002, 2004, 2006, 2007, 2008 (twice), 2009, 2010, 2011, 2012, 2013, and 2015. Applicant applied for Russian citizenship for both of his children born in the United States.

Applicant believes he relinquished his Russian permanent residency when he sold his Russian apartment in 2012. He maintains a valid Russian passport solely for the purpose to facilitate his travels to Russia. He claimed he only uses the Russian passport to visit Russia, and his U.S. passport to travel to any other country. He expressed his willingness to surrender his Russian passport as a condition of access.

Applicant does not consider himself a dual U.S.-Russian citizen because the Russian government does not recognize any of his U.S. documents, and his allegiance lies with the United States. He and his family have no plans of returning to live in Russia. They plan to retire in the United States. He averred he and his family enjoy living an American lifestyle. He stated he is a loyal U.S. citizen.

Applicant's wife was born, raised, and educated in Russia. She worked for the Russian government when they met. They were married in 1993, and they have two children (ages 10 and 21), and a 27-year-old stepchild. She held her Russian citizenship until 2006, when she and her daughter became naturalized U.S. citizens.

Applicant's mother (age 73) and father (age 82) are residents and citizens of Russia. Both of them worked for the Soviet government in research centers in areas with intelligence and military applications. His father and his father-in-law were members of the Soviet Union's Communist Party. His father held a sensitive leadership position in a research center. His mother-in-law (age 77) is a dual citizen of the United States and Russia. She worked for a sensitive Soviet government agency.

Applicant's sister, aunt, and two nieces are citizens and residents of Russia. He maintains contact with at least three Russian friends. At the request of a Russian friend with contacts with the Russian military, Applicant assisted a Russian company to obtain certain U.S. certifications for a foreign product.

I take administrative notice of the following relevant facts concerning the Russian Federation (Russia). Russia has a highly centralized, authoritarian political system dominated by President Vladimir Putin. Although the United States has long sought a full and constructive relationship with Russia, current relations between the two old war allies appears to have again turned adversarial. In August 2017, the President signed into U.S. law sanctions targeting Russia for, in part, Russian interference in the 2016 U.S. elections and Russia's aggression in Ukraine, including its continuing unlawful annexation of Crimea

In 2016, the then Director of National Intelligence reported to Congress that the leading state intelligence threats to the United States will continue to be Russia and

China, based on their capabilities, intent, and broad operational scope. A recent human rights report from the U.S. State Department reflects the commission of significant human rights violations in Russia, including restrictions on political participation and freedom of expression, electoral irregularities, and the lack of due process in politically motivated cases.

Policies

The SOR was issued under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.

“[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Foreign Influence

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

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates two 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; 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 was born, raised, and educated in Russia. Applicant’s parents, sister, aunt, and two nieces are citizens and residents of Russia. His mother-in-law is a dual U.S.-Russian citizen residing in the United States. He is close to his parents, sister, and other relatives living in Russia. He visits them almost every year. Applicant has frequent contact with his parents, sister, and relatives living in Russia.¹ He does not have any financial or property interests in Russia.

¹ See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be “frequent” under AG ¶¶ 7 and 8).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection for his parents and sister as indicated by his frequent contact with them and his almost annual visits to Russia to visit them.

Applicant's relationships with residents of Russia create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives, who live in Russia. For example, if intelligence agents or government officials in Russia wanted to expose Applicant to coercion, they could exert pressure on his relatives residing in Russia. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

An applicant's possession of close family ties with their family living in a foreign country are not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The adversarial relationship of Russia with the United States, and Russia's "history of conducting espionage against the United States puts a heavy burden of proof on Applicant" to demonstrate that his relationships with family members living in Russia do not pose a security risk. See ISCR Case No. 12-04780 at 3 (App. Bd. Nov. 13, 2013).

Guideline B is 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. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or his relatives living in Russia. Nevertheless, it is not possible to rule out such a possibility in

the future. Applicant's relationships with family members living in Russia create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in Russia by providing sensitive or classified information.

Moreover, Applicant's parent's, his in-laws, his wife's, and his personal long-term relationships and connections to the Russian government and prior military service establish an inherent conflict of interest. Applicant, his parents, and his in-laws worked for the Russian government or the military in intelligence-related areas with military applications. He and his relatives are known in the Russian government and military circles. Applicant held leadership positions and a Russian secret clearance. He received three patents with funds provided to him by the Soviet government or the military. These connections create a potential conflict of interest between Applicant's obligation to protect classified or sensitive information or technology and the Applicant's desire to help a foreign person, group, or country by providing that information or technology.

Department Counsel produced substantial evidence of Applicant's contacts or relationships with family living in Russia, raising the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists three 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;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the 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.

The 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(c) have limited applicability. Applicant has frequent contact with his parents and sister, who are citizens and residents of Russia. He visits his relatives in Russia almost every year, and he has frequent telephonic or computer contact with his parents and her sister.

Applicant's loyalty and connections to family living in Russia are positive character traits. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with family living in Russia] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in Russia.

There is no evidence that the Russian government or those conducting espionage have approached or threatened Applicant or his family to coerce Applicant for classified or sensitive information. However, there would be little reason for U.S. competitors or enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States – Russia adverse relationship. Applicant's family living in Russia could become potential targets of intelligence agents because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant's family living in Russia.

Applicant established significant connections to the United States since he immigrated in 1995, and became a naturalized U.S. citizen in 2009. He has had more limited connections to Russia since 2009. Notwithstanding, his connections to his family

living in Russia are significant. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Applicant's close relationship to his relatives, who are vulnerable to potential Russian coercion, outweighs his connections to the United States in the security analysis. Moreover, Applicant and his family are personally vulnerable to coercion when he visits Russia, as he does almost annually. Foreign influence security concerns under Guideline B are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline B in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

There are some facts supporting a grant of Applicant's access to classified information. Applicant, 53, entered the United States in 1995, and became a naturalized U.S. citizen in 2009. His wife and children are dual citizens of the U.S. and Russia residing in the United States. He has no investments in Russia. He offered to surrender his Russian passport, if necessary for him to obtain his access. He has successfully worked for a federal contractor for several years. Applicant offered his inventions and patents to the United States and federal contractors. He believes that such offer shows his complete freedom from foreign influence.

Notwithstanding, Applicant's Russian family connections, viewed in light of him having served in the Russian military, his education, his work in sensitive matters, and having held a Russian security clearance, outweigh the favorable evidence contained in the record. (See ISCR Case No. 14-04937 (App. Bd. December 6, 2016) ("there is a rational connection between service in a foreign military and access to a foreign country's national secrets (which imposes a fiduciary relationship with that country) and susceptibility to pressure or persuasion to aid that foreign country at the expense of the U.S.) See, e.g., ISCR Case No. 10-00824 at 4 (App. Bd. Aug. 6, 2012) (Prior involvement with a foreign defense establishment or prior access to sensitive foreign military projects raises "significant questions that require scrutiny in evaluating an applicant's security eligibility.")

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.² The danger of coercion from the Russian government or intelligence agents is more likely than in many other countries. Russia competes with the United States militarily, diplomatically, and through trade. Russia has a history of espionage targeting U.S.

² 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).

military and industrial secrets. Russia and the United States have an adversarial relationship.

The weight of the evidence supports denial of Applicant's access to classified information. Applicant has close ties of affection and obligation to his immediate relatives who are citizens and residents of Russia. "It is not to question Applicant's patriotism to acknowledge that the record in [Applicant's] case raises the reasonable concern that [he] could be placed in a position of having to choose between [his] ties to the U.S. and [his] obligations to [his] foreign family members." ISCR Case No. 07-02485 at 5 (App. Bd. May 9, 2008) (reversing grant of security clearance because of Chinese connections). I conclude Applicant has failed to mitigate the foreign influence security concern.

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
Subparagraphs 1.a - 1.k:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge