



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-05686
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

July 28, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 16 November 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, L, E, and J.¹ Applicant answered the SOR 24 December 2007, and requested a hearing. DOHA assigned the case to me 31 January 2008, and I convened a hearing 2 April 2008. DOHA received the transcript (Tr.) 10 April 2008.

Findings of Fact

Applicant admitted that his sister is a resident citizen of Russia (SOR 1.a.), and that he traveled to Russia in 2007 to visit her (SOR 1.b.). He denied the remaining

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

allegations of the SOR under Guidelines B, L, E, and J. He is 40-year-old software architect employed by a defense contractor since February 2005.² He has not previously held a security clearance.

Applicant was born in Russia, then part of the Soviet Union in June 1967. He grew up and was educated there, and performed two-years compulsory military service in his early 20s. His ultimate dream growing up was to immigrate to the U.S. In 1990, he immigrated to Israel with his wife because they were unable to obtain visas to immigrate to the U.S. However, in 1996 he immigrated to the U.S. on a skilled-worker visa. He became a naturalized U.S. citizen in May 2003, and obtained his U.S. passport in July 2003.

Applicant and his wife have two children: a daughter born in Israel in 1995 and a son born in the U.S. in 2001. Applicant's parents immigrated to the U.S. in 2001. His parents-in-law immigrated to the U.S. in 2002. His only relatives still living in Russia are his sister and her family. His sister is a pediatrician working in a medical clinic. It is not clear whether the clinic is government-run or a private concern. Her husband manages a garage.

Applicant has tried, without success, to persuade his sister and her family to immigrate to the U.S. He flew to Russia in October 2007 to try to persuade her in person, again without success. He does not expect to travel to Russia again, and has not called her since his return to the U.S. However, she calls him every few weeks to see how his family is doing.

Applicant is alleged to have falsified his March 2006 clearance application (G.E. 1), by answering "no" to question 17A (SOR 3.a.), summarized on the application print-out as "foreign property, business connections, or financial interests?" This answer is alleged to be false because a U.S. company co-founded by Applicant 1) had business clients in Italy, Spain, Russia, Japan, Israel, and India and 2) Applicant had business partners at this company and a second company he co-founded who were resident citizens of Russia. These same corporate connections were alleged to be disqualifying because of security concerns under foreign influence (Guideline B) and outside activities (Guideline L). Applicant denied the allegations, and the government failed to establish the facts necessary to support the allegations.

First, the companies at issue are, without question, U.S. corporations, having been founded in the U.S. with U.S. addresses. Second, the government produced no guidance that a U.S. corporation with business clients overseas has "foreign property, business connections, or financial interests" within the meaning of question 17A. Third, Applicant's evidence established that his two business partners in this first company were naturalized U.S. citizens before the founding of the company, based on the July

²Technically, Applicant and his wife are co-owners of a limited liability corporation subcontracted to the defense contractor sponsoring Applicant's clearance request. However, only Applicant is personally employed on that contract.

1998 and February 1999 issue dates on their U.S. passports (A.E. D). Applicant's business partner in the second company had been a legal permanent resident (LPR) of the U.S. since August 2002 (A.E. D), and had received notice to attend his naturalization oath ceremony in April 2008 (A.E. E). Finally, Applicant terminated his interest in both companies once he became aware of the government's security concerns (A.E. B, C)

The facility security officer at Applicant's company reports that Applicant is highly regarded at the government agency where he works (A.E. A). The agency confirms that Applicant is attentive to the agency's security requirements.

Russia—a former Soviet Republic—is a nominal democracy with a mixed human rights record. It has been the target of terrorist activity in recent years. Russian federal forces pursuing terrorists act with impunity while engaging in torture, summary executions, disappearances, and arbitrary detentions. Additional problems include corruption, media suppression, life-threatening prison conditions, and corruption in law enforcement.

Russia has an active and significant information collection program focusing on the U.S. As of 2005, Russia was one of the two most aggressive collectors of sensitive and protected U.S. technology and accounted for much of such targeting. However, Russia has not been demonstrated to target U.S. citizens to obtain protected information. Furthermore, the U.S. and Russia cooperate over a broad spectrum of foreign-policy issues, particularly counter-terrorism efforts.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline B (Foreign Influence), Guideline L (Outside Activities), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

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 something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the

government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests 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.³

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁴ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.⁵

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the country involved, Russia and the U.S. enjoy competitive foreign relations, although they cooperate on a wide variety of issues. While Russia is actively engaged in the collection of U.S. information, there is no evidence suggesting that it targets its expatriate citizens such that would make Applicant or his sister likely targets for coercion, duress, or influence.

Considering Applicant's circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his family contacts. Applicant's foreign travel to Russia in 2007 has no independent security significance. Applicant's sister has no demonstrated connection to the Russian government. Department Counsel has

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴Revised Adjudicative Guidelines, ¶ 6.

⁵Revised Adjudicative Guidelines, ¶ 7.(a).

articulated no sensible reason I should consider her as a potential source of influence on Applicant. I conclude that it is unlikely he can be pressured based on his contacts with his sister. Accordingly, I resolve Guideline B for Applicant.

The government failed to establish a case for disqualification under Guideline L. The two companies co-founded by Applicant were U.S. corporations. His co-founders in both companies were either U.S. citizens or LPRs of the U.S. The fact that those companies had clients who were foreign corporations does not on its face implicate any disqualifying condition under Guideline L, and the government offered no independent evidence to connect Applicant to a foreign entity within the meaning of the guideline. Nor did the government produce evidence to show that Applicant was required to disclose these outside companies, regardless of clientele. Finally, Applicant disposed of his interest in both companies out of an abundance of caution. I resolve Guideline L for Applicant.

The government failed to establish a case for disqualification under Guidelines E and J.⁶ This conclusion does not flow from any analysis of Applicant's credibility regarding why he failed to list his two outside companies on his clearance application, but from the government's failure to produce facts demonstrating that these two companies or their client list constituted "foreign property, business connections, or financial interests" within the meaning of the relevant question on the clearance application. I resolve Guidelines E and J for Applicant.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant
Subparagraph d: For Applicant

Paragraph 2. Guideline L: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph a: For Applicant

⁶¶16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

Paragraph 4. Guideline J: FOR APPLICANT

Subparagraph a: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge