



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-04496
)	
Applicant for Security Clearance)	

Appearances

For Government:
 Emilio Jaksetic, Esquire, Department Counsel
 For Applicant: Kathleen E. Voelker, Esquire

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 14 September 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C , B, and E.¹ Applicant answered the SOR 15 October 2007, and requested a hearing. DOHA assigned the case to me 3 December 2007, and I convened a hearing 10 January 2008. DOHA received the transcript (Tr.) 18 January 2008.

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.

Findings of Fact

Applicant admitted the SOR allegations except for SOR 1.d. and 3.a.² She is a 34-year-old senior website developer employed by a defense contractor since August 2007. She has not previously held a security clearance.

Applicant was born in Russia, then a part of the U.S.S.R., in September 1973. She grew up and was educated there, eventually obtaining the equivalent of a master's degree in computer science in October 1995. She first married in September 1992, at age 19, and she and her husband had a son together, born about a year before they divorced in August 1994. Her ex-husband is now dead.

In September 1996, she immigrated to the U.S. with her son on a fiancé visa, having accepted an offer of marriage from a native born U.S. citizen. They married in December 1996 and divorced in June 2000. They had no children together. Applicant married her third husband, also a native born U.S. citizen, in August 2001. He adopted her son in October 2002 (A.E. B). Her son acquired U.S. citizenship with the adoption. Applicant and her husband own their own home—valued at \$630,000—and fully paid for. She has a company retirement account worth \$65,000, and a U.S.-made will. She is active in the main-line- protestant church she attends with her husband. She votes in U.S. elections. She donates blood. She has no financial or other interests in Russia.

Applicant became a naturalized U.S. citizen in October 2003. At the time of her naturalization, she possessed the valid foreign passport required of legal permanent residents (LPR) by U.S. immigration law. That passport was a renewal she obtained in August 2000. After becoming a U.S. citizen, she explored the requirements for renouncing her Russian citizenship through the website maintained by the Russian Embassy, and discovered that the paperwork requirements—including some she could only obtain by traveling back to Russia—were so onerous that she decided not to pursue the issue further. Her Russian passport expired in August 2005.

Applicant fully disclosed her foreign connections in her December 2005 (G.E. 1) and September 2006 (G.E. 2) clearance applications, as well as during her December 2006 subject interview. Sometime in 2006, Applicant applied for a new Russian passport, which she received in September 2006. She used the married name that she used to emigrate from Russia, as that is the only name Russia would recognize her by. The passport is valid until September 2011. She has never used the passport to travel (A.E. B). She obtained the passport solely as a required identity document for her to accomplish certain legal actions under Russian law, including renunciation of her Russian citizenship.

Under Russian law, its citizens are identified by name to the property where they resided in Russia, and an annual fee is charged for each name attached to the

²At hearing, Department Counsel stated his intent to not pursue SOR allegations 1.d. and 3.a., and requested that I enter formal findings for Applicant on those two allegations. I have done so.

residence—regardless of whether that person still lives at that address. Applicant's brother was paying the fee where Applicant and her parents lived, but the annual fee kept increasing. Applicant sought to have her name removed from address. In exploring the requirements for accomplishing that action, she learned that she could give her brother a power-of-attorney rather than return to Russia, but that she would have to provide proof of Russian citizenship in order to execute a legally-effective document at the Russian Embassy. At the same time, her December 2005 clearance application had suggested to her that her dual citizenship might have adverse clearance implications. Researching the requirements for renouncing her Russian citizenship on the Russian Embassy website (A.E. R), she learned that not only would she have to have a valid Russian passport to renounce her Russian citizenship, she would have to prove her entitlement to reside in the U.S., either with a passport or permanent residence card. However, she also learned that many of the documents required to originate in Russia could now be obtained by her brother with a valid power-or-attorney.

When Applicant obtained her Russian passport in September 2006, she began the process of renouncing her Russian citizenship and having her name removed from her former residence in Russia. The process proved every bit as onerous as she thought it would be in 2003, when she first decided not to pursue it. However, after several false starts and additional, previously undisclosed, document requirements, Applicant succeeded in getting her name off the Russian residence, and finally submitted her renunciation paperwork to the Russian Embassy in December 2007 (A.E. M). The announced processing time is four months. In the meantime, Applicant's facility security officer (FSO) holds her Russian passport because she cannot surrender it to the Russian Embassy until her renunciation is approved, at which point the embassy will take possession and destroy it.

Applicant first learned that her clearance concerns were well-founded when she received interrogatories from DOHA in July 2007 (G.E. 3). In her July 2007 response, her FSO (at her previous employer) stated that the Russian passport had been surrendered to him and his office was assuming responsibility for holding it. He also indicated he was aware of his obligation to notify DOHA if the passport was returned to Applicant. This FSO retained the passport until it was retrieved by the assistant FSO at Applicant's current employer and transferred to the current FSO. The passport has remained in the FSO's possession continually except when—acting on instructions given to her by DOHA—she gave the passport to Applicant for a brief period when Applicant was required to produce the passport at the Russian Embassy. Applicant later returned the passport to the FSO.

Applicant's parents immigrated to the U.S. in 1998, and live about an hour from Applicant and her husband. She sees them at least monthly. Her father is a newly-minted U.S. citizen—December 2007 (A.E. O). Her mother is a legal permanent resident (LRP) of the U.S., applied for her U.S. citizenship in December 2006 (A.E. P), and is awaiting her interview. Applicant's aunt, an accountant for a bank, lives in Ukraine. Applicant last saw her in 2004, but otherwise has no contact with her. Applicant went to Ukraine in 2004, because she was on a family vacation in Hungary,

and took her husband and son to Ukraine to show them where she spent summers with her grandmother growing up. She used her U.S. passport to travel to Hungary and Ukraine (A.E. L). Applicant's brother lives in Russia. He manages a consumer electronics store for a French company operating in Russia. Ordinarily, Applicant only has contact with him on special occasions, like his birthday or New Year's, but contact has been much more frequent over the last year as he has served as her middleman obtaining the Russian documents she required to renounce her Russian citizenship. In 2000, when she was not yet a U.S. citizen, she traveled to Russia for his wedding.

Applicant's character witnesses, who include her FSO, friends, neighbors, and her husband, extol her honesty and trustworthiness. Her FSO, who is also a co-owner of the company, corroborates many details of Applicant's efforts to renounce her Russian citizenship, including the instructions she received from DOHA to allow Applicant to take her passport to the Russian Embassy to process her renunciation. She also notes that the government agency where Applicant works is so pleased with her work there that they happily provide the escort required because Applicant does not have a clearance. Applicant's former supervisor (A.E. A) is similarly laudatory about her work and trustworthiness. She received excellent evaluations at two former employers (A.E. H, I).

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 imposes rigid visa requirements on foreign travelers entering, and traveling within, Russia. U.S. citizens who have at one time held Russian citizenship may be required to renounce Russian citizenship before applying for a Russian visa in their U.S. passport. Unless a Russian citizen has formally renounced his or her Russian citizenship, he or she risks being considered a Russian citizen and not allowed to depart except on a Russian passport.

Russia has an active, significant, recent, and ongoing collecting 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 is not known 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 C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal 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

The government failed to establish a case for disqualification under Guideline C. First, on the facts of this case, there is no conceivable way Applicant's using her married Russian name, the only name known to Russia when she left the country, to obtain her Russian passport in September 2006, could be an independent demonstration of foreign preference (SOR 1.c.). Second, the government takes the position that actions taken to renounce citizenship should be viewed as a disqualifying exercise of foreign preference. By the plain language of Guideline C, Applicant's actions, which meet the nominal requirements of ¶10,⁴ could raise security concerns and might be disqualifying. Her actions are not required to be so viewed, and on the facts of this case clearly cannot reasonably be so viewed. Put another way, if Applicant had acted on her desire to renounce her Russian citizenship when she first looked into the issue in October 2003, while her U.S.-required Russian passport was still valid,

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

⁴Revised Adjudicative Guidelines, ¶ 10.(a) exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This included but is not limited to: (1) possession of a current foreign passport; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

there would be no Guideline C allegations. However, even were I to find that the government established security concerns, I conclude that she mitigated the Guideline C security concerns.

As posed by the government, I would have to find that her dual citizenship is not based solely on her parents' citizenship, but is based on her active exercise of dual citizenship after becoming a naturalized U.S. citizen.⁵ However, she not only expressed a willingness to renounce her foreign citizenship, she took active and difficult steps to renounce her foreign citizenship, all while avoiding having to return to Russia.⁶ While all exercise of dual citizenship occurred after she obtained U.S. citizenship, as an adult,⁷ the only use to which she put her Russian passport was tacitly sanctioned by DOHA.⁸ DOHA instructed Applicant's FSO to let Applicant take the passport to the Russian Embassy to process her paperwork. Further, she not only stated willingness to invalidate her passport, she surrender it to her FSO as soon as she was aware it was an issue, and waits only approval of her renunciation to return it to the embassy for destruction.⁹ Her actions have been a consistent effort to remove any possible means of foreign influence. I resolve Guideline C for Applicant.

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.¹⁰ 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

⁵Revised Adjudicative Guidelines, ¶ 11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

⁶¶ 11.(b) the individual has expressed a willingness to renounce dual citizenship;

⁷¶ 11.(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

⁸¶ 11.(d) use of a foreign passport is approved by the cognizant security authority;

⁹¶ 11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

¹⁰Revised Adjudicative Guidelines, ¶ 6.

heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.¹¹

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, or there is no evidence suggesting that it targets its expatriate citizens such that would make Applicant or her family members 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 her family contacts. Applicant's foreign travel to Russia in 2000 and Ukraine in 2004 have no independent security significance. Her parents were effectively a non-issue since 1998, even more so now that her father is a U.S. citizen and her mother is well on her way to U.S. citizenship. Applicant's aunt has no connection to the Ukrainian government, and Applicant has virtually no contact with her. Similarly, Applicant's brother has no connection to the Russian government. Department Counsel has articulated no sensible reason I should consider either as a potential source of influence on Applicant. I conclude that it is unlikely she can be pressured based on her contacts with her brother. Accordingly, I resolve Guideline B for Applicant.

The government requested that I find for Applicant under Guideline E. I granted the request.

Formal Findings

Paragraph 1. Guideline C: FOR APPLICANT

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

Paragraph 2. Guideline B: FOR APPLICANT

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

Paragraph 3. Guideline E: FOR APPLICANT

¹¹Revised Adjudicative Guidelines, ¶ 7.(a).

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