



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



Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

02/10/2025

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns presented by his contacts with Russia. Eligibility for access to classified information is denied.

Statement of the Case

On April 1, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on April 17, 2024 (Answer) and requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 5, 2024. Prior to the scheduling of the hearing, Applicant requested that his hearing be conducted in-person in State A as opposed to a virtual hearing. Noting the cost and time saving benefits, and that a video teleconference over the Microsoft Teams network is approved by DOHA for due process purposes, I denied his request. After consulting the parties concerning a hearing date, I scheduled the hearing for January 16, 2025. The hearing was convened as scheduled via the Microsoft Teams video teleconference platform. I received a transcript (Tr.) of the hearing on January 23, 2025.

Evidence

I admitted Government Exhibits (GE) 1 through 3 in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through G, which I admitted as evidence without objection. I marked as Hearing Exhibit (HE) I, the Government's request that I take administrative notice of certain information about the Russian Federation (Russia) that was attached to its request. I marked as HE II, the May 28, 2024 letter from the Government to Applicant disclosing its proposed evidence. At Applicant's request and without objection, I left the record open for the parties to provide post-hearing documentation. Applicant timely provided AE H through J, which I admitted without objection. The record closed on January 23, 2025.

Administrative Notice

HE I is Government's motion that I take administrative notice of certain facts about the country conditions in Russia, as well as its relationship with the United States as of May 28, 2024, as referenced in official U.S. Government documents. 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)). Without objection, I take administrative notice of the facts contained therein.

The facts are summarized in the written request, so I will not repeat them verbatim in this decision. I will provide a brief overview, as follows. The Office of the Director of National Intelligence reported that Russia presents one of the most serious foreign influence threats to the United States, using its intelligence services, proxies, and wide-ranging influence tools to try to divide Western alliances, and increase its sway around the world, while attempting to undermine U.S. global standing, amplify discord inside the United States, and influence U.S. voters and decision-making. Russia aggressively uses its intelligence services to collect sensitive U.S. information to further these goals.

While its government professes to be a federal republic, in reality, it has an authoritarian form of government largely controlled by Vladimir Putin. Its government commits serious and varied human rights abuses against its own citizens, including enforced disappearances, arbitrary or unlawful killings, punishment of family members for alleged offense by a relative, and serious restrictions on freedom of expression. Russia has also been victimized by terrorism.

In February 2022, Russia launched a full-scale, unprovoked invasion of Ukraine. This invasion has become the largest conventional military attack on a sovereign state in Europe since World War II. While Russia's act of aggression has received international condemnation, and many countries, including the United States, have imposed sanctions on it, as of the date of this writing, it persists with its unlawful invasion.

Russian security services have arrested U.S. citizens on spurious charges, denied them fair and transparent treatment, and have convicted them in secret trials without presenting evidence. Russian officials may unreasonably delay U.S. consular assistance to detained U.S. citizens. Russian authorities arbitrarily enforce local laws against U.S. citizen religious workers and open questionable criminal investigations against such individuals. Russian security services are increasingly arbitrarily enforcing local laws targeting foreign and international organizations they consider “undesirable,” and U.S. citizens should avoid travel to Russia to perform work for or volunteer with non-governmental organizations. Russia may refuse to acknowledge dual nationals' U.S. citizenship, deny their access to U.S. consular assistance, prevent their departure from Russia, and conscript dual nationals for military service. (HE I; AE G)

Findings of Fact

Applicant is a 62-year-old U.S. citizen who co-owns a government contractor (Firm A) for which he has worked since 2007. He earned a bachelor's degree in 1990. He was married in 1989 and divorced in 2014. He remains unmarried, but since about April or May 2021, he has cohabitated with a dual citizen of Russia and the United States (SOR ¶ 1.a). I will hereinafter refer to Applicant's cohabitant as “Ms. B.” Applicant has three adult children who are U.S. citizens and residents. He has held a security clearance since 1991. (Tr. 50, 75-77; Answer; GE 1-3; AE A, B, D, E, F)

Ms. B was born in Russia and resided there until about 2010, when she moved to the United States to find a better life. She has been a U.S. resident since 2010 and became a naturalized U.S. citizen in 2018. Ms. B's mother and brother are citizens and residents of Russia (SOR ¶ 1.c). Her mother is about 84 years old. Ms. B holds a valid U.S. passport that she obtained in January 2019. She also holds a valid Russian passport (SOR ¶ 1.b). Her Russian passport does not expire until 2028. Applicant does not know whether she plans to renew it. She has used her Russian passport to travel to Russia in 2015, 2021, and 2022 to visit her mother and brother. Each of these visits to Russia lasted approximately three weeks. She has an ownership interest in two apartments in Russia that she purchased before becoming a U.S. citizen. One apartment, in which her mother resides, is valued at about \$40,000 (SOR ¶ 1.d). The other apartment is one she co-owns with her son that is valued at about \$110,000 (SOR ¶ 1.e). Her son is a Russian citizen residing in Thailand. (Tr. 37, 43-45, 55-67, 74-75, 77-81, 84-87, 101; Answer; GE 2, 3; AE A, B, D, E, F)

Ms. B is close with her mother. She speaks to her mother at least every other day. Her mother receives a pension from the Russian government, and Ms. B has sent her money over the years, but not after the U.S. imposed sanctions against Russia. Prior to Ms. B meeting Applicant, her mother visited her in the United States on two occasions. Ms. B's mother has been retired for over 25 years. She was an executive assistant. Applicant does not believe that she worked for the Russian government, but he is not sure. Applicant has met Ms. B's mother once when the three met in Italy. There is a language barrier, so their conversations were limited. He reported this foreign travel and his foreign contact with Ms. B's mother to his facility security officer (FSO)

and the FSO for whom his company subcontracts. (Tr. 55-67, 79, 81-84, 86, 96; Answer; GE 2, 3; AE D)

Applicant has never met Ms. B's brother in person, but he waved to him over a video call. He has never met Ms. B's son, but Ms. B has traveled to Thailand twice to visit him in the last four years, using her U.S. passport. Applicant does not believe that Ms. B's son has any plans to move back to Russia, and he has a disability that prevents him from being conscripted in the Russian Army. Ms. B consistently uses her U.S. passport for international travel unless she is visiting her family in Russia. She has not visited her family in Russia since Russia invaded Ukraine in February 2022. She does not plan to visit Russia again until the war ends, but she may go back if her mother's health fails. (Tr. 55-67, 79, 81-84, 86, 96, 101-102; Answer; GE 2, 3; AE D)

When Ms. B moved to the United States, her brother did not speak to her for three years. Applicant believes that her brother was angry with Ms. B because he would have to take care of their mother in her declining years. He also believes that her brother may have been angry because he disapproves of the United States. Ms. B's brother is a sporting goods salesman that is not affiliated with the Russian government. Applicant believes that he owns his apartment in Russia, but that he does not receive a pension from the Russian government. He served two years of compulsory Russian military service about 30 years ago. Applicant does not believe that Ms. B's brother is subject to conscription because he is about 50 years old. Applicant testified that Ms. B and her brother have reconciled, and she speaks to him over a video call approximately two to five times per year. Her brother has a wife and two daughters who are also Russian citizens and residents. Applicant does not believe that any of Ms. B's family members know that he works for a government contractor. (Tr. 55-56, 84-87, 102-104; Answer; GE 2, 3; AE D)

Applicant first met Ms. B in November 2020. It is unclear from the record when he realized that Ms. B is a Russian citizen, but he became aware that she held a valid Russian passport in about June 2021, around one of the times Ms. B visited her mother in Russia. Beginning in about June or July 2021, he voluntarily divulged to his FSO information about Ms. B's ties to both Russia and the United States. He averred that Ms. B has been open and honest with him when he requested information that he was required to report. He has been forthcoming with his employer and with the U.S. Government regarding his relationship with Ms. B, her Russian family members, and her ties to Russia. Applicant has told Ms. B that if anything should come up that threatens the safety or wellbeing of her family members in Russia, he cannot do anything to help them, but he would go straight to the FBI. (Tr. 55-67, 74-75, 77-81, 83, 87; Answer; GE 2, 3; AE B-D, F)

Applicant testified that he has not spoken to Ms. B about selling her Russian apartments because it is not his place to do so. However, he opined that Ms. B does not want to sell her apartments in Russia for several reasons. One reason is that it would deprive her mother of a place to live. Another reason is that she co-owns the other apartment with her son, so she could not sell it without his agreement. A third reason is that Ms. B gave one of her ex-husbands, a Russian citizen who resides in Russia, a

power of attorney (POA) that gave him complete control over her financial affairs in Russia, including her two apartments. The document evidencing the POA is not in evidence, but Applicant testified that she executed the POA in mid-2024. He has not seen the POA and does not know whether it is revocable or irrevocable. Finally, he opined that Ms. B could not sell the apartments because she does not have a Russian bank account. (Tr. 61-63, 80, 87-88, 90-94; GE 2, 3; AE B, F)

Ms. B is currently employed by Firm A. She makes a little under \$40,000 per year. She does not own any real property in the United States, but she does own a car here. She has a bank account in the United States and U.S.-based individual retirement accounts (IRA) worth approximately \$100,000. She is not a member of any civic organizations in Russia or the United States. She voted in the United States in the last election. (Tr. 94-97, 104; AE C, J)

Applicant is a U.S. citizen by birth and has lived in the U.S. his entire life. He owns four pieces of real property in the U.S. that he testified have a gross value of just over \$1,000,000. He is in the process of selling two of those properties that he testified have a gross value of about \$600,000. He also has a one-half inheritance interest (with his brother) in a lien-free family farm that he valued at between \$2,500,000 and \$3,000,000. He and his brother will be selling that farm soon and will split the proceeds. He has a U.S.-based IRA worth approximately \$1,900,000. He holds no foreign assets. He is planning to retire sometime in early 2025. He maintains that he does not have a conflict of interest because of his relationship with Ms. B. In the event he does, he claims he would resolve it in favor of the United States. He testified that he and Ms. B are both aware that travel to Russia for U.S. citizens is dangerous. He would not travel to Russia. (Tr. 58-60, 97-101; Answer; GE 1-3; AE D, J, F, G)

Two of Applicant's longtime personal and professional acquaintances testified during his case in chief. One of these individuals is the co-owner and FSO for Firm A. This individual filed the incident report with the Defense Information Security Service (DISS) that resulted in the filing of the SOR. The other witness is an employee of the government contractor (Firm B) that subcontracts Firm A. They have known Applicant both before and after he met Ms. B. They have not reviewed the SOR but are generally aware of the Government's security concerns related to his girlfriend's dual citizenship, her Russian family, and her valid Russian passport. (Tr. 31-45; GE 3; AE C)

Applicant's FSO testified that he was not aware that Ms. B owned property in Russia but does not know what the bearing of the information is. Both witnesses stated that they have no reason to question Applicant's or his girlfriend's conduct, intent, loyalty, or patriotism. They say they have noticed no behavioral changes in him since he met his girlfriend. To their knowledge, he has been open and honest about his relationship with his girlfriend, and he has followed all reporting requirements attendant to cohabitating with someone who holds dual citizenship. They testified that he only has access to classified information when he is at his worksite, and he is supervised in that event. In 2021, Firm B submitted a compelling needs statement on Applicant's behalf. The witness from Firm B testified that need persists. (Tr. 31-45; AE C)

Applicant also provided four character-reference letters from current and former colleagues and friends, including Firm A's co-owner and FSO, who also testified. They wrote about Applicant's loyalty, integrity, and trustworthiness. They also wrote that they believe he is fully capable of handling and protecting classified information, as they have witnessed him do so in the past. Some noted that he voluntarily complied with reporting requirements regarding his dual-citizen girlfriend. Some wrote that it would cause hardship to the interests of the United States if Applicant lost his security clearance. They opined that he should maintain his security clearance. His employer's FSO wrote that this process is a waste of resources, claiming that Applicant will be retiring in about six months. (Tr. 41-42, 56; AE C)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The

Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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.

The nature of a nation's government, its relationship with the United States, 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 or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism.

A heightened security risk is established by the administratively noticed facts about Russia in the record. These include Russia's ongoing, persistent, pervasive attempts to target the United States, seeking to collect intelligence, erode democracy, undermine U.S. national policies and foreign relationships, and increase Russia's global position and influence. A heightened risk is also established due to Russia's mistreatment and harassment of U.S. citizens and its own citizens, as well as its human rights issues.

Applicant's long-term romantic relationship and cohabitation with Ms. B, who is a dual citizen of Russia and the United States and holds a valid Russian passport, create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion" and "a potential conflict of interest between [his] obligation to protect classified or sensitive information or technology and [his] desire to help a foreign person, group, or country by providing that information or technology." AG ¶¶ 7(a), 7(b), and 7(e) are established. AG ¶¶ 7(a), 7(b), and 7(e) are also established by Applicant's close and continuing relationship with Ms. B and Ms. B's bonds of affection with her mother and brother, who are citizens and residents of Russia.

To put it another way, Applicant's contacts with Russian nationals in both the United States and Russia, create a potential conflict of interest because Russian officials with knowledge of Applicant's contacts in those countries could place pressure on him, directly or indirectly in an effort to cause him to compromise sensitive information. Those relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Applicant's close and continuing relationship with Ms. B and her ownership of Russian real property also establishes AG ¶ 7(f).

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)). Once disqualifying conditions are established, the burden then shifts to Applicant prove that he has mitigated the security concerns.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns including the following that are potentially applicable:

- (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, 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;
- (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.

Applicant has a close and longstanding romantic relationship with Ms. B. While she is a U.S. citizen and resides in the United States, she holds a Russian passport, and has traveled to Russia in the past. She allegedly does not intend to travel to Russia in the future, but the record evidence is equivocal on this point, especially if her elderly mother falls ill. Applicant has little contact with Ms. B's Russian family members who reside in Russia, but that relationship must be viewed through a lens that reflects an individual's natural ties to the immediate family of their longstanding romantic partner. I consider these factors against the backdrop of the nature of the Russian government. The Russian government does not respect the fundamental rights of its own citizens, much less the rights of the citizens of the United States. Russia has made consistent and pervasive efforts to harm U.S. interests through espionage and other unseemly means. Given these considerations, I do not find that Applicant has met his burden of showing that it is unlikely he 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. AG ¶ 8(a) does not apply.

AG ¶ 8(b) is partially applicable. Applicant has deep and longstanding ties to the United States. He was born in the United States and has lived here his entire life. His children, his friends, and his assets are here. He has worked for U.S.-based defense contractors for over 30 years. However, given the close and longstanding nature of his relationship with Ms. B, and considering her ties to a repressive country and government, a conflict of interest persists.

AG ¶ 8(c) does not apply. The contact Applicant maintains with a Russian citizen is not infrequent or casual and could create a risk for foreign influence or exploitation. This sentiment is especially true because Applicant's long-term partner has close family members who live in a country that would not hesitate to leverage those relationships to gain sensitive U.S. information.

AG ¶ 8(e) is applicable, but its applicability is not dispositive of overall mitigation. Record evidence shows that Applicant has promptly reported his Russian contacts. While this action provides evidence that he is being open and honest about his Russian contacts, it does not remove the underlying heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. These disclosures also do not eliminate his potential conflict of interest.

AG ¶ 8(f) is applicable to the two apartments in Russia the Government alleged in SOR ¶¶ 1.d and 1.e. The value of these apartments, while significant, pales in comparison to the wealth that Applicant has accumulated in the United States. Moreover, Ms. B appears to have divested her control of those properties to some degree, and Applicant has no ownership interest in them. I find that these apartments could not be used to influence, manipulate, or pressure Applicant.

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 relevant 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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. I have considered

Applicant's positive character evidence and his longstanding ties to the United States. However, given that Applicant's long-term romantic partner is a Russian citizen with significant familial ties there, and noting the repressive nature of the Russian Government, combined with its desire and capability to harm U.S. interests, I find his relationship with Ms. B presents an unmitigated conflict of interest and security risk. The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the foreign influence security concerns.

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.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge