



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



In the matter of:)
)
) ISCR Case No. 07-05809
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

February 21, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on May 11, 2005. On June 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence (Guideline B) and foreign preference (Guideline C) guidelines. The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant provided his answer to the SOR on September 4, 2007. DOHA issued a notice of hearing on September 8, 2007 for a hearing that was originally scheduled for November 26, 2007. At the hearing, four exhibits (AE 1 through 4) were placed in the record to support the Government's case. Applicant's one exhibit (AE A) was also received in evidence. Applicant called one witness and also testified. On December 19, 2007, Applicant submitted one additional exhibit (AE B) through Department Counsel.

The exhibit (also received in evidence) contains material provided by Applicant through his employer to the Ukrainian Embassy pertaining to his request to renounce his Ukrainian citizenship. All exhibits were received in evidence without objection. DOHA received the transcript of the hearing on December 4, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the two allegations under the foreign influence guideline and two allegations under the foreign preference guideline. He is 29 years old, and has been married for about eight years. He seeks a security clearance.

Foreign Influence

Applicant was born in the Ukraine in March 1978. He began his college education at a private Ukrainian university in September 1994. His wife was born in the U.S. in 1971. After she graduated from a U.S. university with degrees in linguistics and Russian, her professor suggested she travel to Ukraine to improve her language skills. Applicant's wife came to Ukraine in the summer of 1995 and spent next three years studying the language, and working for several U.S. companies. Applicant met her in 1995 while employed in a summer job at the same university. In October 1998, he was issued a Ukrainian passport that is valid for 10 years. (SOR 2.a.)

In June 1999, Applicant, 21 years old, received his Bachelor's Degree in Ecology at the Ukrainian university. Following graduation, he married his wife, and they moved to the U.S. in September 1999 to build their future. In October 2003, he and his wife traveled to Ukraine for pleasure. (SOR 1.b.) He used his Ukrainian passport.

In October 2004, Applicant became nationalized as a U.S. citizen. He obtained his U.S. passport in December 2004, and used the passport for travel to the Ukraine in August 2006 (SOR 1.b.) for a vacation lasting about 14 days.

Applicant's mother (SOR 1.a.), 50 years old, was born in the Ukraine in April 1957, and is a resident citizen of the country. She has been a genetic scientist for the past 25 years, with a concentration on cattle breeding. She has been employed by a private company that does some work for the Ukrainian Government, and some work for private customers. She has never been a member of the Communist Party.

Applicant's stepfather (SOR 1.a.), 58 years old, who married his mother in June 1987, works for a small, private company as a carpenter in Ukraine. The company installs doors and windows for its customers.

Applicant's two younger brothers (SOR 1.a.) are actually his half siblings born in Ukraine and currently reside there. Applicant's middle brother, who is 19 years old and attends a private college, will not have to serve in the military due to a medical

condition. His youngest brother, 16 years old, is a senior in high school. Both brothers live at home with Applicant's parents.

As Applicant noted in his SCA (GE 1), the Government of Ukraine privatized government property in the 1990s. Applicant's family of five was (and still is) living in an apartment. Under the privatization process, each family member was awarded one fifth ownership of the apartment.¹ Applicant estimated his ownership interest in the apartment was about \$4,000.00. Although he immigrated to the U.S. in September 1999, the Ukrainian Government was still billing all apartment interest holders for utilities and taxes. His mother eliminated Applicant's name as an interest holder in the apartment, so she would not have to continue paying his taxes and utilities. Applicant no longer has a financial interest in the apartment.

As a part of the privatization process, the Ukrainian Government also privatized some government businesses by giving stock to its citizens. The citizens were given investment certificates that could be invested in the Ukrainian economy. Applicant invested his certificate in an oil company, and received about \$100.00 in stock. His mother was advised that the stock had to be upgraded in some undefined manner, requiring Applicant's presence at a shareholder meeting in a city in Ukraine. With no desire to travel to the Ukraine or keep the stock, he wants to have the old shares transferred to his mother so she can execute the conversion. Applicant estimates the stock is worth about \$10.00 at the present time.

Applicant keeps in regular contact with his family in Ukraine. He e-mails his family once a week, and contacts his family, primarily his mother, by telephone once a month. His wife's parents, U.S. citizens by birth, live about 3 ½ miles from Applicant. He and his wife socialize with them several times a week. Applicant has seen his family face-to-face twice since he immigrated to the U.S., once during a vacation in 2003, and again while on vacation in 2006.

When Applicant's wife returned with Applicant to the U.S. in 1999, she wanted to work for a newspaper. Instead, she decided to help her mother care for their seriously ill grandmother. When her grandmother's condition worsened, a permanent nurse was hired to take over his wife's care responsibilities.

Applicant's wife decided to obtain training in the health industry. She completed 1 ½ years of therapy training to become a certified therapist. She opened a message/therapy business about a week before the hearing.

In his September 2006 interview (GE 3), Applicant repeatedly indicated that neither he nor any of his family members had ever been pressured or coerced by a foreign entity. None of his family members work or are agents of a foreign country. He received briefings reminding him to report all foreign contacts. Before he left for the

¹ Applicant fully disclosed his property interest and stock interest in his security forms identified as GE 1 and GE 2.

Ukraine in August 2006, he informed his security department. His security officer informed him to report any foreign contact immediately to his security department. When he returned from his Ukrainian trip, he informed his security department there were no foreign contacts. When asked why he thought the security procedures were in place. He replied:

Well, it is the information that could be used against the United States by some people that have intentions of bringing down the American Government, or just destroying the American country.

It all might sound like a small bit of information, it might not be important, but when it becomes part of the big picture that is when those groups of people can take certain action. (Tr. 72)

Foreign Preference

Applicant indicated to the Government in September 2006 he was willing to relinquish his Ukrainian passport if required in order to obtain security clearance access. (GE 3) In a letter dated May 23, 2007 (attachment to GE 4), Applicant stated he had no intention of renewing his Ukrainian passport, and was ready for suggestions on relinquishing his passport. On November 14, 2007, Applicant initiated the process for renunciation of his Ukrainian citizenship by paying \$150.00 to the Ukrainian Embassy. (AE B)

In a letter dated November 21, 2007, and addressed to the hearing office of DOHA, the Director of Corporate Security with Applicant's employer explained the circumstances under which Applicant surrendered his Ukrainian passport. On November 15, 2007, the Director was advised by DOHA that he had authority to take custody of passports. On November 20, 2007, Applicant surrendered his Ukrainian passport to his employer's security office. He was told the passport would not be returned and would be destroyed upon expiration. Applicant was also told his security clearance would be administratively terminated if he requested the passport. Applicant stated he no longer wanted dual citizenship and had no plans of requesting his passport.

Having decided to renounce his Ukrainian citizenship, Applicant went to the Ukrainian Embassy in Washington, D.C., and learned from the Vice Council that he would have to submit documentation, including his passport and an affidavit from his parents attesting that he owed them nothing. Applicant assembled the appropriate documentation and his security office mailed the package, including his Ukrainian passport (in their possession) on December 18, 2007 to the Ukrainian Embassy for further action. See, AE B.

Since he began working for his current employer in May 2005, Applicant has made regular contributions to his retirement account. The account is now worth about \$20,000.00. Applicant also opened a separate retirement account during his previous employment. That account is worth about \$5,000.00 Though he could not vote in the

2004 election because he registered too late, Applicant voted in the local, state, and national elections in 2006.

Character Evidence

In May 2005, Applicant began working for his current employer as an electrical test specialist. In January 2007, Applicant began working as the Environmental Engineer for the Director of Environmental Safety-Occupational Health. Applicant's job is auditing and inspecting the facility, and handling the waste generated. Within the performance evaluation system, according to the Director, that consists of a systematic array of stated goals and objectives that are monitored throughout the year, Applicant is viewed as a valuable member of the team. In the Director's view, Applicant has never had a security or safety issue while under his supervision. The Director defined the requirement to report business travel, but was not really certain about the reporting requirements for a pleasure trip, indicating, "I can't speak to that. I believe there is a request, but how formal I - -" (Tr. 27)

The Ukrainian Government is a parliamentary system with an executive, a legislative and a judicial branch. While freedom of speech is respected by the government, freedom of the press is still sometimes subverted. Although the country has achieved remarkable progress in switching from a government-controlled economy to a market-based economy, government corruption and serious human rights abuses remain at a significant level. Ukraine agreed to nuclear non-proliferation, and provided a large number of troops to help the coalition forces in the Iraq war. Ukraine cooperates with the U.S. in the war on terrorism. Finally, Ukraine is not on the list of state sponsors of terrorism.

Policies

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this

decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Foreign Influence (FC)

Foreign contacts and interests may raise security concerns if the applicant, with divided loyalties, may be manipulated to help a foreign entity that is not in the U.S. interests, or is vulnerable to coercion.

Foreign Preference (FC)

When an individual’s actions show preference for a foreign country over the U.S., he may be prone to make decisions harmful to the U.S.

Analysis

Foreign contacts and interests may be a security concern if the individual with divided loyalties or foreign interests, may be manipulated or induced by a foreign entity, or is vulnerable to coercion or pressure. Adjudication under this guideline should consider the identity of the country where the foreign contact or financial interest is located, and whether the country targets U.S. citizens for intelligence information and/or is associated with a risk of terrorism.

The government has established a case for disqualification under the foreign influence guideline. Applicant’s mother, stepfather, and two brothers were born and live in Ukraine. His mother has been a genetic scientist for 25 years. His stepfather is a carpenter and his half brothers attend school. FI disqualifying condition (DC) 7.a.

(contact 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) applies. Applicant has regular contact with his foreign family members who are resident citizens of Ukraine. This contact creates a heightened risk of foreign exploitation under the 7.a. of the FI guideline.

After considering the entire record, I conclude that neither FI MC 8.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 U.S.)*, nor FI MC 8.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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest)*, nor FI MC 8.c. are applicable.

One of the elements of FI MC 8.a. is an evaluation of the country involved. Recognizing that friendly as well as unfriendly nations have conducted intelligence gathering against the U.S., the nature of a country's government and its relationship with the U.S. is still relevant in determining whether an applicant's family are subject to coercion or pressure. It logically follows that the risk of pressure is greater in a country that has an authoritarian type government, and/or whose interests are inimical to those of the U.S., and who conducts intelligence gathering or is on the list of state sponsors of terrorism. Ukraine has a democratic form of government with an improving market economy. It is not a state sponsor of terrorism, and there is no evidence that it is engaged in intelligence gathering. However, there is evidence of corruption in the government, and less than commendable human rights record.

In evaluating the positions or activities of Applicant's foreign family members as required by FI MC 8.a., the totality of the family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 00-0317, (Ap. Bd. Mar. 29, 2002) Though none of the family members work directly for or are agents of the Ukrainian Government, there is evidence showing how close Applicant is to his family members. Though he has seen his family twice in the last eight years, he e-mails them once a week and telephones them about once a month. Pressure could be placed on them or through them to Applicant, putting him in a position of having to choose between them and the U.S.

FI MC 8.b. does not apply because Applicant's ties to the Ukraine are not minimal. Second, though his ties to the U.S. are emerging, there is only about 11 months of evidence concerning his job performance, and almost no independent evidence of relationships and loyalties away from the job. FI MC 8.b. is inapplicable due to the close relationship between Applicant and his foreign family members. Subparagraph 1.a. is resolved against Applicant.

Subparagraph 1.b. of the SOR alleges Applicant's pleasure trips to Ukraine in 2003 and 2006 raise security concerns under the FI guideline. Applicant used his Ukrainian passport in 2003 before he became a U.S. citizen. In 2006, he used his U.S. passport. Both trips were related to family relationships and have no independent security significance. Subparagraph 1.b. is resolved in Applicant's favor.

Having weighed and balanced the SOR with the chronological circumstances of this case, Applicant's foreign property interests, although alleged under the foreign preference (FP) guideline, should be evaluated under the FI guideline, as the record does not suggest or infer Applicant is trying to take any action as set forth in FP DC 10.a.2. (*residence in a foreign country to meet citizenship requirements*), or FP DC 10.a.5. (*using foreign citizenship to protect financial or business interests in another country*) FI DC 7.e. (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation*) has application to Applicant's \$4,000.00, or one-fifth property interest in an apartment owned by his family, and the \$100 in stock Applicant has in the Ukrainian oil company.

The record does not address Applicant's income and/or the combined income of he and his wife. Applicant did talk about his other U.S. assets. He mentioned his \$20,000.00 retirement account with his current employer, and his \$5,000.00 account with a previous employer. Applicant credibly testified his mother was successfully able to rescind his apartment interest so she would not have to pay his utility and tax obligation in addition to hers. The only plans Applicant has regarding the \$100.00 in stock (that is only worth about \$10.00 currently), is to transfer the stock to his mother so she can take the necessary steps to preserve the stock and place ownership in her name.

While I believe FI DC 7.e. does not apply to circumstances because a **substantial** property interest is not involved, I find that Applicant's property interest does not cause a conflict and could not be used to pressure Applicant. FI MC 8.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*) applies to mitigate Applicant's foreign property interests. Subparagraph 2.b. is resolved in Applicant's favor.

Foreign Preference (FP)

The concerns of the FP guideline apply to actions that show a preference for a foreign country over the U.S. Applicant's possession of a Ukrainian passport (valid until October 2008), after receiving his U.S. citizenship in October 2004, and obtaining his U.S. passport in December 2004, warrants application of FP DC 10.a.1. (*possession of a current foreign passport*)

However, Applicant has presented substantial documentation under FP MC 11.b. (*the individual has expressed a willingness to renounce his citizenship*) and FP MC

11.e. (the passport has been destroyed, surrendered to the cognizant security office, or otherwise invalidated) to substantiate a finding for him under the FP guideline. As noted in the factual findings, Applicant indicated a willingness to relinquish his Ukrainian passport. In June 2007, he repeated his willingness and disclosed his investigative results describing the process culminating in the renunciation of his Ukrainian citizenship. In November 2007, he took additional steps to destroy his passport by turning it over to his security office for destruction. Finally, AE B indicates that Applicant has executed all the steps to complete renunciation process. Subparagraph 2.a. is resolved in Applicant's favor.

Whole Person Concept

In reaching my ultimate findings, I have also evaluated the evidence in the context of the general factors of the whole person concept found in Enclosure 2, page 18 of the Directive. Applicant's strong ties with his foreign family members makes him vulnerable to pressure and influence that could be exercised through his foreign family members to him. Based on the totality of the evidence in the context of the whole person, Applicant's evidence in mitigation is insufficient to overcome the security concerns of foreign influence.

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 (Foreign Influence, Guideline B): FOR APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	For Applicant

Paragraph 2 (Foreign Preference, Guideline C): FOR APPLICANT.

Subparagraph 2.a.	For Applicant
Subparagraph 2.b.	For Applicant

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.

Paul J. Mason
Administrative Judge