KEYWORD: Guideline B

DIGEST: Applicant is a dual citizen of the United States and Russia. His Russian passport expired in the late 2000s. His wife is a dual citizen of the United States and a country which was part of the former Soviet Union. Applicant denied the two SOR allegations that asserted his parents are citizens and residents of Russia. The Judge found those allegations were established. Applicant's parents are elderly, both are retired, and neither is affiliated with the Russian Government. Applicant maintains weekly contact with them. Adverse decision affirmed.

CASENO: 18-02641.a1

DATE: 07/10/2019

DATE: July 10, 2019

In Re:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 13, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On April 25, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert E. Coacher denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant has been an employee of a Federal contractor for over ten years. He was born in Russia and immigrated to the United States over 20 year ago. He has been a U.S. citizen for about 13 years. His wife is a dual citizen of the United States and a country which was part of the former Soviet Union. His two minor children were born in the United States. He owns a home in the United States, but provided no further details.

Applicant is a dual citizen of the United States and Russia. He considered renouncing his Russian citizenship, but did not pursue that action because of the amount of time it would take to do so. His Russian passport expired in the late 2000s. He possesses a current U.S. passport. He has been lauded for his work performance.

Applicant denied the two SOR allegations that asserted his parents are citizens and residents of Russia. The Judge found those allegations were established. Applicant's parents are elderly, both are retired, and neither is affiliated with the Russian Government. Applicant maintains weekly contact with them.

Russia has a political system dominated by its president. "Russia is one of the most aggressive countries conducting espionage against the United States, focusing on obtaining proprietary information and advance weapon technologies beneficial to Russia's military modernization and economic development. Russia's intelligence services as well as private companies and other entities frequently seek to exploit Russian citizens or persons with family ties to Russia who can use their insider access to corporate networks to steal secrets." Decision at 3-4. They offer financial incentives to U.S. citizens to encourage them to compromise classified information. Russia also has significant human-rights problems, marked by abuses such as forced confessions, torture, and prisoner mistreatment.

The Judge's Analysis

Considering Russia's relationship with the United States, its intelligence collection operations, and its human rights record, Applicant's parents living in Russia creates security concerns under Directive, Encl. 2, App. A ¶¶ 7(a) and 7(b). Applicant has substantial family ties to

Russia. He could be placed in a position to have to choose between the interests of his parents and those of the United States. He did not meet his burden of establishing that he has deep and longstanding relationships and loyalties in the United States. The circumstances tending to support the granting of Applicant's security clearance are less significant than those weighting towards its denial.

Discussion

Applicant contends the Judge's conclusions are speculative. In challenging the Judge's overall decision, he claims security concerns arising from his parents living in Russia are "HIGHLY unlikely" and based on potential rather than actual risk. Appeal Brief at 1. These arguments are not persuasive. Security clearance adjudications involve predictive judgments about a person's suitability in light of that person's past conduct and present circumstances. The U.S. Supreme Court highlighted this concept in *Department of the Navy v. Egan*, 484 U.S. 518, 528-29 (1988), by stating:

> A clearance does not equate with passing judgment upon an individual's character. Instead, it is only an attempt to predict his possible future behavior and to assess whether, under compulsion of circumstances or for other reasons, he might compromise sensitive information. It may be based, to be sure, upon past or present conduct, but it also may be based upon concerns completely unrelated to conduct, such as having close relatives residing in a country hostile to the United States. "[T]o be denied [clearance] on unspecified grounds in no way implies disloyalty or any other repugnant characteristic." *Molerio v. FBI,* 242 U.S. App. D.C. 137, 146, 749 F.2d 815, 824 (1984). The attempt to define not only the individual's future actions, but those of outside and unknown influences renders the "grant or denial of security clearances . . . an inexact science at best." *Adams v. Laird,* 136 U.S. App. D.C. 388, 397, 420 F.2d 230, 239 (1969), *cert. denied*, 397 U.S. 1039 (1970).

In responding to Department Counsel's File of Relevant Material (FORM), Applicant objected to matters in that document. In the decision, the Judge stated "Applicant's objections to the 'Facts' and 'Argument' sections of the FORM are not proper objections, but rather are arguments supporting why he should receive a clearance. Those objections are overruled." Decision at 2. In his appeal, Applicant takes exception to the Judge's decision to overrule his objections. We find no error in the Judge's ruling. The Facts and Argument sections in the FORM do not constitute evidence, but are Department Counsel's arguments. As we have stated in the past, an error in a FORM, as opposed to one in a Judge's decision, is not an appealable issue. *See, e.g.*, ISCR Case No. 15-00535 at 2 (App. Bd. Mar. 13, 2017).

In his response to the FORM, Applicant also objected to Department Counsel's request for the Judge to take administrative notice of certain facts pertaining to Russia. Applicant argued the administrative notice documents had nothing to do with him personally. The Judge separately addressed and overruled that objection. We find no error that ruling. Directive, Encl. 2, App. A ¶ 6 provides that, in Guideline B cases, "[a]ssessment 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." It is well established that a Judge may take administrative notice of facts about a foreign country from official U.S. Government publications when conducting that foreign influence assessment. *See, e.g.*, ISCR Case No. 05-11292 at 4, n.1 (App. Bd. Apr. 12, 2007).

Applicant raises challenges to other aspects of the Judge's decision. For example, he disputes that Judge's statement that he declined to renounce his Russian citizenship because he was never required to do so; he takes exception to the Judge's statement that he is "very close" to his parents because that is a matter of speculation; he argues that having parents in Russia does not place him in a position of having to choose between their interests and those of the United States, and he challenges the Judge's determination that he has not established deep and longstanding relationships and loyalties in the United States. These arguments amount to a disagreement with the Judge's weighing of the evidence. Viewed in its entirety, Applicant's brief advocates for an alternative interpretation of the record evidence, which is not enough to show the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant notes that he was granted a security clearance in 2011, and the security concerns regarding his parents arose during a reinvestigation. He indicated that he is confused why those security concerns are now being raised. In this regard, we note that no one has a right to a security clearance. *Egan* at 528. Nor does a prior favorable security clearance decision give rise to a vested right or interest in continued retention of a security clearance. To the extent that Applicant's argument could be construed as raising the question whether DoD is equitably estopped from denying or revoking his security clearance, it is unpersuasive because the Federal Government is not barred from denying or revoking access to classified information. *See, e.g.*, ISCR Case No. 01-19823 at 5 (App. Bd. Dec. 3, 2003)(citing prior Board decisions). Consequently, Applicant's prior favorable adjudication in 2011 does not entitle him to continued retention of a security clearance. He also notes that he has "a lot riding on the decision." Appeal Brief at 1. The Directive, however, does not permit us to consider the impact of an unfavorable decision. *See, e.g.*, ISCR Case No. 14-02619 at 3 (App. Bd. Apr. 7, 2016).

Applicant has not established that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Egan* at 528. *See also* Directive, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board