KEYWORD: Guideline B

DIGEST: Applicant has two siblings. One is a Russian citizen who works for the Russian Government in a low-level position. Applicant communicates with this sibling on a weekly or monthly basis. Her other sibling is a Russian citizen who is a permanent resident of the United States. The nature of the foreign government in question is an important considerations in foreign influence cases because it provides context for other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. Moreover, as a matter of common sense, it is fair to say that the risk of exploitation, inducement, manipulation, pressure, or coercion is greater when the foreign country involved has an authoritarian government. Adverse decision affirmed.

CASENO: 18-02802.a1

DATE: 11/06/2019

DATE: November 6, 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
William H. Henderson, Personal Representative

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 12, 2019, 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). After initially requesting a decision on the written record, Applicant requested a hearing. On July 24, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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. The Judge found in favor of Applicant on an allegation that has not been raised as an issue on appeal and is not discussed below. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant, who is in her early 30s, works for a company that is sponsoring her for a security clearance. She was born and raised in one of the former republics of the Union of Soviet Socialist Republics (USSR). She later moved to Russia and obtained Russian citizenship to qualify for social benefits. She lived there for about five years before immigrating to the United States. She became a U.S. citizen in 2015. She indicated that she is willing to renounce her Russian citizenship but has not taken any steps to do so. Her husband and children are U.S. citizens. She and her husband have about $800,000 of assets in the United States. She has no assets in Russia.

Applicant's parents lived in Russia for many years. Her father retired from a skilled trade position. Through her sponsorship, her parents obtained permanent resident status in the United States in 2018. Her father later returned to Russia for medical treatment. At the time of the hearing, she believed he would return to the United States later in 2019. He receives a $125 monthly pension from the Russian Government.

Applicant has two siblings. One is a Russian citizen who works for the Russian Government in a low-level position. Applicant communicates with this sibling on a weekly or monthly basis. Her other sibling is a Russian citizen who is a permanent resident of the United States.

Since the breakup of the USSR, Russia shifted to a centralized authoritarian state under its president. In 2018, the National Counterintelligence and Security Center identified Russia as one of the three most capable and active cyber actors involved in economic espionage and reported that Russia conducted sophisticated, large-scale hacking operations to collect sensitive U.S. business and technology information. In 2018, the Office of the Director of National Intelligence (ODNI) assessed that Russia will employ a variety of aggressive tactics to bolster its standing and weaken the United States. ODNI also reported that Russian efforts to influence the 2016 U.S. presidential election represent a significant escalation in Russia's desire to undermine U.S.-led liberal democratic order and assessed the Russian intelligence services will continue to develop capabilities to provide its

president with options to use against the United States. The State Department assessed Moscow as being a high-threat location for terrorist activity directed at U.S. Government interests. Russian also has significant human-rights issues, including extrajudicial killings, systematic torture, arbitrary arrest and detention, severe restrictions on freedom expression and the media, and widespread corruption at all government levels.

The Judge's Analysis

Applicant's relationships with relatives who are living or visiting Russia create a heightened risk of foreign inducement, manipulation, etc. and a potential conflict of interest. Mitigating Condition 8(b) partially applies because of her relationships and loyalties in the United States. She has resided here for about nine years. Her husband and children are U.S. citizens and her assets are located in the United States. However, she has close relationships with family members in Russia, and they are at risk because of Russian intelligence operatives, terrorists, and human rights violations. The evidence that Applicant presented is not sufficient to overcome the foreign influence security concerns.

Discussion

Applicant contends that the Judge's conclusions based on the Government's request for administrative notice of facts pertaining to Russia are arbitrary, capricious, and contrary to law.[1] In this regard, Applicant quotes from a number of paragraphs in the Judge's Decision and argues that, "[a]bsent supporting evidence, it is incorrect to postulate that '[t]he risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government . . . .'" Appeal Brief at 4-5, quoting Decision at 11. However, along with other factors, the nature of the foreign government in question is an important considerations in foreign influence cases because it provides context for other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. *See*, *e.g.*, ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017). Moreover, as a matter of common sense, it is fair to say that the risk of exploitation, inducement, manipulation, pressure, or coercion is greater when the foreign country involved has an authoritarian government. The Appeal Board has recognized this concept in prior cases. *See, e.g.*, ISCR Case No. 03-24933 at 5-6 (App. Bd. Jul. 28, 2005); ISCR Case No. 03-10955 at 3 (App. Bd. May 30, 2006); ISCR Case No. 02-24566 at 3 (App. Bd. Jul. 17, 2006); and ISCR Case No. 06-17164 at 2 (App. Bd. Jun. 21, 2007). In this case, we find no reason to disturb the Judge's challenged conclusion.

Applicant also argues that "a 'heightened risk' to U.S. national security should only exist ". . . if there is an actual, rather than potential, threat from the foreign country of targeting U.S. citizens for the purpose of obtaining protected information through coercion, persuasion, or duress . . . ." (Appeal Brief at 5), that no evidence of an actual threat of this type was presented below, and

[1] In the Decision, the Judge noted that Applicant objected to the relevancy of information in the Government's request for administrative notice. In addressing that issue, the Judge stated, "Applicant's objections go to the weight and not the admissibility of the Government's administrative notice request." Decision at 3. On appeal, Applicant's challenges to the Judge's conclusions based on the administrative notice request also go to the matter of the weight that should be given to, rather than the admissibility of, the documents or information in question.

that the administrative notice request only presented evidence of a potential threat. We do not find this argument persuasive. First, Applicant cites no authority that directly supports her argument. Second, security clearance adjudications are not an exact science, but rather are predictive judgments about a person's suitability in light of that person's past conduct and present circumstances. *Department of the Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Third, the word "potential" is used in the Guideline B disqualifying conditions. *See* Directive, Encl. 2, App. A ¶ 7(b). Fourth, the Directive presumes there is a nexus or rational connection between proven conduct or circumstances under any guideline and an applicant's security eligibility. Direct or objective evidence of nexus is not required. *See, e.g.*, ISCR Case No. 17-00507 at 2 (App. Bd. Jun. 13, 2018). Fifth, it is well settled that the Federal Government is not required to wait until there is a present case, or imminent threat, of espionage or attempted espionage before it can deny or revoke access to classified information for a given applicant. More specifically, the Government need not present evidence that a foreign country is currently targeting a particular applicant to obtain access to protected information. *See, e.g.*, ISCR Case No. 02-09907 at 7 (App. Bd. Mar. 17, 2004). Finally, as a matter of common sense, a potential threat of foreign exploitation under given circumstances may be sufficient to create questions or doubts about an Applicant's security clearance eligibility, and such doubts must be resolved in favor of national security. *See* Directive, Encl. 2, App. A ¶ 2(b). Similarly, the Board reviewed language in a case where the Judge appeared to distinguish between "heightened risk" and "potential heightened risk." We noted that risk encompasses potential outcomes. We did not find a meaningful distinction between "heightened risk" and "potential heightened risk." See, ISCR Case No. 14-02149 at 6-7, n.8 (App. Bd. Mar. 5, 2019). Based on our review of the record, Applicant has not established that the Judge erred in his assessment of the security risks posed by her relatives residing in Russia.

Applicant further argues that the Judge did not specifically consider Mitigating Condition 8(a), although he listed it in his Decision as a mitigating condition that could possibly apply. This argument does not establish error below. As we have previously stated, a Judge is not required to discuss all of the analytical factors set forth in the Directive. *See, e.g.*, ISCR Case No. 17-02236 at 2 (App. Bd. Jul. 2, 2018).

Additionally, Applicant argues that the Judge erred because the evidence in support of Mitigating Conditions 8(a), 8(b), and the whole-person concept was "so powerful as to be overwhelming." Appeal Brief at 5. In making these arguments, she asserts, for example, that none of her foreign relatives are politically active and points out that none of them has done anything to attract the attention of a foreign government. We have previously noted that the relative obscurity of foreign family members does not provide a meaningful measure of whether Applicant's circumstances pose a security risk. *See, e.g.*, ISCR Case No. 17-03450 at 3 (App. Bd. Feb 28, 2019). In general, Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence and advocate 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 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