

KEYWORD: Guideline B

DIGEST: Applicant's contact with a high-level Russian Government official is a sufficient basis for concluding the security concerns arising from that contact are not mitigated. Adverse decision is affirmed.

CASE NO: 19-02177.a1

DATE: 08/12/2020

DATE: August 12, 2020

_____)	
In Re:)	
)	
-----)	ISCR Case No. 19-02177
)	
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 August 28, 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). Applicant requested a decision on the written record. On May 21, 2020, after considering the record, Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in the findings of fact and 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 and Analysis

Applicant, who is in his 60s, fled the Soviet Union nearly 30 years ago. His father, sister, and two children from a former marriage are citizens and residents of Russia. He last saw his father about 16 years ago, has little contact with his sister, and has not seen his Russian children in more than 30 years. He is now married to a U.S. citizen, and they have two children who were born in the United States.

Applicant has two friends who are citizens and residents of Russia but has had little or no contact with them in the past four to six years. He has two “associate(s)” who are citizens and residents of Russia. Decision at 3. The associates are “employed by the Russian government” in high-level positions. *Id.* He communicates with the two associates about once every one to two years with the last time being in 2017. The two associates clearly pose a potential for improper foreign influence.

Russia uses cyber-operations to collect intelligence and sensitive U.S. business and technology information. Russia appears to be a significant threat to U.S. national security.

The Judge’s mitigation analysis consisted of the following:

As noted above in my Findings of Fact, Applicant’s high-placed Russian associates pose a significant Foreign Influence threat to our national security. Although he Skypes them only about “1 time every 1 to 2 years,” the threat is clearly there. Foreign Influence is found against Applicant. [Decision at 5.]

Discussion

As noted above, the Judge found Applicant’s associates were “employed by the Russian government.” In his appeal brief, Applicant contends that Judge relied on outdated information regarding one of his Russian associates, noting the associate had retired. In this regard, we note that Applicant amended his personal subject interview with a comment that the Russian associate “retired around November of 2017.” Government Exhibit 3, Interrogatories, at 3. In light of this

amendment, the Judge erred in finding one of the associates was employed by the Russian Government.

While we recognize that the Judge's analysis of the Guideline B security concerns focused almost exclusively on Applicant's contacts with the two Russian Government officials, we conclude his error regarding the employment status of one of them was a harmless. *See, e.g.*, ISCR Case No 11-15184 at 3 (App. Bd. Jul. 25, 2013) (An error is harmless if it did not likely affect the outcome of the case). It is reasonable to conclude that the retired high-level government official still has contact with other high-level Russian Government officials. Moreover, Applicant's other associate remains a high-level Russian Government official. In light of the significant threat that Russia poses to U.S. national security, Applicant's contact with the remaining high-level Russian Government official is a sufficient basis for concluding the security concerns arising from that contact are not mitigated. *See, e.g.*, ISCR Case No. 19-00831 at 4-6 (App. Bd. Jul. 29, 2020)(applying the "very heavy burden of persuasion" to an applicant with family members in Russia because it is viewed as hostile to the United States for the purpose of DOHA adjudications).

In his appeal brief, Applicant makes arguments that are based on matters from outside the record, which we are precluded from considering. Directive ¶ E3.1.29. Applicant argues that the Judge's decision "is based on the fact that I was born in Russia as [sic] therefore I could be a Russian spy because of that." Appeal Brief at 2. There is nothing in the Judge's decision that support that argument. The Judge's decision, the SOR, and the File of Relevant Material (FORM), are about Applicant's contacts in Russia. He also argues that his foreign contacts cannot be considered a threat to U.S. national security and highlights circumstances in his life that weigh in his favor. His arguments consist of nothing more than a disagreement with the Judge's weighing of the evidence, which is not enough to show that the Judge's analysis was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02239 at 3 (App. Bd. Jul. 20, 2020). He refers to the Judge's decision as a "Discriminatory conclusion." Our review of the record, however, reveals no evidence that would persuade a reasonable person that the Judge lacked the requisite impartiality or was prejudiced against him in any manner. *See, e. g.*, ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020).

Applicant has failed to establish the Judge committed any harmful errors. 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.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *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