



Date: February 25, 2025

In the matter of:

Applicant for Security Clearance

ISCR Case No. 24-00702

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Brian A. Pristera, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 9, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On December 23, 2024, Defense Office of Hearings and Appeals Administrative Judge Benjamin R. Dorsey denied Applicant security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant, 28 years old, was born in the United States in 1996 and became a naturalized Polish citizen in 2000 based on his parents' citizenship. In 2006, when he was ten years old, he relocated to Poland with his family and has resided there since then.

The SOR alleged concerns related to Applicant's contacts to and interests within Poland including, under Guideline C, that he applied for and has maintained Polish residency since about 2006, through which he is enabled and intends to vote in Polish elections and exercised that ability

in the 2021 Polish presidential election. Under Guideline B, the SOR alleged that Applicant's parents are dual citizens of the United States and Poland, with his mother currently residing in the latter, and that Applicant has various financial interests in Poland, including assets currently valued at approximately \$11,000 and an anticipated inheritance valued at approximately \$300,000.

In response to the SOR, Applicant admitted all allegations with explanation and requested that his case be decided based on the written record. He received a complete copy of the Government's File of Relevant Material (FORM) on October 3, 2024, and was notified of his ability to respond with objections or additional information for the Judge to consider. Applicant did not respond to the FORM and the Judge resolved the Guideline C concerns favorably but found against Applicant on the Guideline B concerns.¹

On appeal, Applicant argues that the Judge provided contradictory analyses for two of the SOR concerns and failed to properly consider and weigh the evidence regarding the remaining three, rendering his adverse decision arbitrary, capricious, or contrary to law. For the reasons set forth below, we affirm.

Discussion

Applicant's Counsel first contends that the adverse formal findings for SOR ¶¶ 1.a and 1.b are directly contradicted by the Judge's narrative analyses and therefore represent either typographical errors or an arbitrary and capricious result. In support of this contention as it pertains to Applicant's relationship with his mother (SOR ¶ 1.a), Counsel asserts that the Judge "clearly articulated" that the Government did not meet its burden to show that the relationship was "a *security concern*." Appeal Brief at 3 (emphasis added). Counsel's assertion, however, represents an incomplete and inaccurate summary of the Judge's analysis.

The Judge found three disqualifying conditions *potentially* applicable, but ultimately concluded that one of those – AG ¶ 7(a)² – was not established. Tracking the language of that condition and citing the "cordiality between the U.S. and Poland, along with the Polish Government's democratic freedoms and norms," the Judge found that the Government had "not met its burden to show that Applicant's relationship with his mother creates a *heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*." Decision at 5 (emphasis added). Counsel's misrepresentation of what the Judge "clearly articulated" (*i.e.*, insufficient evidence of a *security concern*) not only egregiously overstates the Judge's actual conclusion (*i.e.*, insufficient evidence of a *heightened risk*) as it relates to only one of the potential disqualifying conditions, but also ignores the Judge's analysis regarding the remaining two.

¹ Under Guideline E, the SOR also alleged that Applicant failed to register for the Selective Service as required by 50 U.S.C. § 3802(a) and Presidential Proclamation No. 4771. The Judge concluded that the Government failed to establish these concerns on the basis that the conduct is potentially disqualifying under Guideline J, which addresses criminal conduct but was not alleged, but is not disqualifying under Guideline E.

² AG ¶ 7(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.

With respect to Applicant's relationship with his father (SOR ¶ 1.b), Counsel similarly contends that the Judge's failure to "address that relationship directly," after finding that the family relationships in Poland did not meet the heightened risk standard, indicates that it "obviously resolves in applicant's favor." Appeal Brief at 3. Here again, Counsel's argument ignores entirely the remainder of the Judge's Guideline B analysis.

To that end, the Judge concluded that AG ¶¶ 7(b) and 7(f)³ were fully established by virtue of the potential conflicts of interest created by Applicant's "significant and longstanding connections with Poland" – which largely considered his relationship with his Polish parents and residence there for the past 18 years, including by choice as an adult and despite his U.S. citizenship – and his "significant Polish property interests, especially in relation to his lack of U.S. property interests." Decision at 5. The Judge went on to find that none of the mitigating conditions fully applied, and concluded that "Applicant's longstanding ties to Poland, as well as his acknowledged divided allegiance between Poland and the United States, [left] questions and doubts about Applicant's eligibility and suitability for a security clearance." *Id.* at 9. The Judge's Guideline B analysis reflects a rational connection between the findings and conclusion, which is sustainable.

Applicant's remaining arguments simply advocate for an alternative weighing of the evidence, which is not enough to show that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). For example, Applicant charges that the Judge failed to "place any weight on the commonsense mitigation related to" his \$1,000 bank account (SOR ¶ 1.c), arguing that it is "a nominal amount, indicative of a bank account used in the normal course of life." Appeal Brief at 4. He also argues that the Judge failed to "properly consider the commonsense needs" of owning forms of transportation in Poland, including the car and motorcycle valued at approximately \$10,000 (SOR ¶ 1.d). *Id.* at 5.

It bears noting that, even without considering the anticipated inheritance, the foregoing "nominal" foreign financial interests still represent more value than what Applicant maintains in the United States – nothing. A comparative valuation between an applicant's financial interests in the U.S. and abroad is a relevant and required consideration in assessing the significance of the foreign interests. *See* ISCR Case No. 01-18860 at 3 (App. Bd. Mar. 17, 2003).

Continuing with that assessment, Applicant also challenges the Judge's adverse finding regarding the inheritance interest in his father's \$300,000 home (SOR ¶ 1.e), arguing that it ignored and improperly weighed that the interest "is not definite, and is only in anticipated interest." Appeal Brief at 5. While prospective, Applicant's inheritance rights represent a significant foreign financial interest which, moreover, he intends to keep. FORM Item 2 at 3. It was not error for the Judge to consider this inheritance interest in assessing Applicant's foreign financial interests as a whole.

³ AG ¶¶ 7(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; 7(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.

After considering the record, we find no reason to disturb the Judge's conclusion that Applicant's longstanding ties to Poland, his comparatively significant financial interests therein, and his acknowledged divided allegiance between Poland and the United States raise unmitigated security concerns under Guideline B.

Conclusion

Applicant has not established that the Judge's conclusions were arbitrary, capricious, or contrary to law. To the contrary, the Judge examined the relevant evidence, weighed the disqualifying and mitigating evidence, and articulated a satisfactory explanation for the decision. The record is sufficient to support that the Judge's findings and conclusions are sustainable. "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

Order

The decision in ISCR Case No. 24-00702 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board