



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: April 10, 2025

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p>	<p>)</p>	<p>ISCR Case No. 23-01463</p>
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Samir Nakhleh, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 16, 2023, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – a security concern raised under Guideline B (Foreign Influence) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On February 28, 2025, Defense Office of Hearings and Appeals Administrative Judge Eric C. Price denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant’s mother and father are resident citizens of Belarus, and the Judge found against Applicant on the sole Guideline B concern. On appeal, Applicant asserts two arguments: that the Judge failed to properly consider all available evidence, rendering his adverse decision arbitrary, capricious, or contrary to law, and that he applied an unreasonable *per se* rule that disqualifies any applicant with family member in Belarus or countries with similar geopolitical conditions. Appeal Brief at 2–3. For the reasons set forth below, we affirm.

Judge's Findings of Fact

Applicant is in her mid-fifties and was born in the former Soviet Union in what is now Ukraine. Applicant became a citizen of Belarus because she lived there when the Soviet Union dissolved. She lived in Germany from 1994 through 2003, when she married a U.S. servicemember and moved to the United States. The couple subsequently had two children who were born in the United States but were entitled to Belarusian citizenship by virtue of their mother's. At Applicant's request, her children's Belarusian citizenship was terminated when both were very young, and Applicant herself was naturalized in 2007. The family has lived in the United States continuously, except from 2014 to 2019, when the family lived in Europe pursuant to her husband's military orders. Applicant has a college degree and a master's degree and has held a security clearance since 2018 without reported incident.

From 2005 to 2015, Applicant worked for various federal contractors, providing language and cultural instruction to U.S. military members. Since 2015, Applicant has been employed by a sole federal contractor in various positions, including as a linguist, a cultural and language instructor, and a site lead. Upon her return to the U.S. in 2019, Applicant transitioned to working for the contractor as a consultant and, since early 2021, as an analyst, conducting research and developing products for her DoD customers. Applicant receives glowing performance reviews and has earned several awards and other accolades for outstanding analysis and support to her federal customers and for her contributions to U.S. national security.

Applicant has no siblings. Her parents are both nearly 80 years old, retired, and have no connection to the Belarusian government except for their state pensions totaling about \$500 per month. Applicant provides financial assistance to her parents for medical and dental expenses and sends money on their birthdays. Her parents own an apartment in Belarus valued at about \$35,000, which Applicant expects them to sell in the next few years if they emigrate from Belarus. If they do not sell the apartment, Applicant will inherit it. Applicant is close to her parents, communicating with them weekly. Because of concerns that their phone calls are monitored, Applicant's phone conversations with her parents are mundane and do not include any information about her job, her husband's job, or anything of potential interest to Belarusian authorities. Her parents apparently believe that Applicant is still teaching Russian and do not know that she has a security clearance. Although they are aware that Applicant's husband is in the military, they have not inquired about his work. Applicant testified credibly that, if she learned that one of her parents was contacted about what she did for a living, she would report the contact to her supervisor and security officer.

Until about six years ago, Applicant regularly traveled to Belarus to visit her parents and a now-deceased grandmother. Under the current regime, Applicant no longer visits Belarus and believes it is also unsafe for her children, in part because of the risk of arbitrary detention. Instead, Applicant meets her parents in third countries, or they visit her in the U.S. Applicant retained her Belarusian passport to facilitate visits to see her parents, but she no longer needs the passport, which will expire within a few years. Applicant stated her intent to renounce her Belarusian citizenship once her parents move to the U.S. or another country. Because U.S. consular services are currently unavailable in Belarus, her parents must travel elsewhere to apply for U.S. permanent residence status.

Other than her parents, Applicant has no relatives or ties in Belarus. Applicant testified that, if she had to choose between the interests of the United States and the interests of Belarus, she would choose the United States. She highlighted that her ties to the U.S. are much stronger: her citizenship, husband, children, and livelihood are all in the United States. Her U.S. financial assets are significant and include bank and high yield accounts, retirement accounts, and real estate. There is no evidence that Applicant or her parents have been subject to any threats, exploitation, manipulation, inducement, pressure, coercion, or other security concerning behavior.

Administrative Notice

Turning first to the Republic of Belarus, the Judge took administrative notice of the following facts among others: Belarus has retained closer political and economic ties to Russia than any of the other former Soviet republics. Since his election in 1994, the president has consolidated his power through authoritarian means. In the wake of the disputed 2020 presidential election, massive nationwide protests were met with violent repression, thousands of arrests, and reports of torture of detainees. Since 2022, Belarus has facilitated Russia's war in Ukraine, which was launched in part from Belarusian territory, resulting in U.S. sanctions against the regime.

The U.S. Department of State has issued a "Do Not Travel" advisory for Belarus due to Belarusian authorities' continued facilitation of Russia's war against Ukraine, the presence of Russian forces in Belarus, arbitrary enforcement of local laws, potential for civil unrest, risk of detention, and the U.S. Embassy's limited ability to provide support to U.S. citizens. All consular services were suspended on February 28, 2022. Additionally, Belarus enforces special restrictions on dual U.S.-Belarusian nationals and may refuse to acknowledge dual U.S.-Belarusian nationals' U.S. citizenship.

Regarding the Russian Federation, the Judge took administrative notice of the following facts among others. The Russian Federation has an authoritarian political system dominated by President Vladimir Putin. In addition to ongoing Russian aggression in Georgia and Ukraine, Russia has attempted to position itself as a great power competitor of the United States, using various means to undermine Western core institutions and to weaken faith in the democratic and free market system. An aggressive and capable collector of sensitive U.S. technologies, Russia uses cyberspace, cyber espionage, and covert agents to penetrate both public and private U.S. enterprises. In Ukraine, Russian armed forces have committed numerous war crimes and other atrocities. At home, Russia also has significant human rights issues, including arbitrary or unlawful killings, extrajudicial killings, enforced disappearances, pervasive torture, sexual violence, and the severe suppression of the media.

The U.S. Department of State has issued a Level 4 Travel Advisory for Russia, advising U.S. persons not to travel to Russia due to unpredictable consequences of the unprovoked invasion of Ukraine, the potential for harassment and detention of U.S. citizens, the arbitrary enforcement of local laws, the U.S. Embassy's limited ability to provide support to U.S. citizens in Russia, and the possibility of terrorism.

The Government stated its position that "the close and ongoing nature of the ties between Belarus and Russia are relevant considerations," but clarified that Belarus—unlike Russia—should

not be considered a nation with interests hostile to the United States and that Applicant consequently does not carry the “very heavy burden of persuasion” that flows from connections in a hostile country. Decision at 5 (internal citations omitted).

Judge’s Analysis

The Judge concluded that the following factors, taken together, created both a heightened risk of foreign exploitation or coercion under AG ¶ 7(a) and a potential conflict of interest under AG ¶ 7(b): Belarus’s continued facilitation of Russia’s war against Ukraine; its close political, economic, and military ties to Russia; its arbitrary enforcement of local laws; the potential for civil unrest; the risk of detention; the U.S. Embassy’s limited ability to provide support to U.S. citizens; Applicant’s frequent communications with her parents; their close ties and bonds of affection; her parents’ dependence upon the Belarusian government for their pensions; and the fact that their communications may be subject to monitoring.¹

In concluding that none of the mitigating conditions fully applied, the Judge highlighted that an adjudication under Guideline B “is not a judgment on an applicant’s character or loyalty to the United States” but rather is “a determination as to whether an applicant’s circumstances foreseeably present a security risk.” *Id.* at 9.

The concern here pertains to the risk to Applicant’s parents residing in Belarus and how that risk could be used to potentially coerce Applicant. It does not relate to her loyalty to the United States. I am persuaded by Applicant’s testimony, corroborated by other record evidence including character letters that there is not a question as to her loyalty to the United States, her valuable contributions and commitment to national security, or her sincere intent to resolve any potential conflict of interest in favor of U.S. interests. She has deep and longstanding relationships, and significant connections and loyalty to the United States. She has made the U.S. her home, is a productive and law-abiding citizen, and has made significant contributions to U.S. national security. However, based upon the current geopolitical situation and dangers in Belarus, I am unable to find that this Applicant could be expected to resolve any conflict of interest between her commitment and loyalty to her parents in favor of the United States interests if a conflict of interest arose. I am also unable to find that it is unlikely that Applicant would be placed in a position of having to choose between her parents and the interests of the United States. [*Id.* at 9-10.]

Discussion

Applicant’s arguments on appeal are two-fold. First, she contends that the Judge failed to consider all the favorable evidence in conducting his mitigation and Whole-Person Concept analysis, rendering his decision arbitrary, capricious, and contrary to law. Second, Applicant

¹ The Judge also found that Applicant’s financial interest in her parents’ apartment established a security concern under AG ¶ 7(f), but concluded this concern to be mitigated as the value of Applicant’s financial interest was “speculative and de minimis” and dwarfed by her financial interests in the United States. Decision at 10.

argues that the Judge “improperly create[d] a *per se* rule against security clearance eligibility for applicants with foreign relatives, despite DoD policy requiring an individualized assessment of risk.” Appeal Brief at 8.

We turn first to Applicant’s argument that the Judge “overlooked critical evidence demonstrating that [Applicant] has taken extensive steps to mitigate any potential security concerns.” *Id.* at 7. Her Counsel lists five specific factors that the Judge purportedly overlooked: Applicant’s lack of financial interests, political ties, or business relationships in Belarus; the fact that her parents receive only a minimal pension from the Belarusian government; Applicant’s refusal to travel to Belarus and her recognition of the country as unsafe for herself and her children; her unblemished security clearance history and numerous commendations; and her strong ties to the United States, including her citizenship, family, career, and financial investments. As is clear from the above summary of the Judge’s findings of fact and his analysis, the Judge explicitly considered and weighed all factors identified by Counsel as overlooked. Applicant’s arguments amount to a disagreement with the Judge’s weighing of this evidence, which is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In Applicant’s second argument, she challenges the conclusion that is at the heart of the Judge’s ruling—that despite Applicant’s longstanding ties and demonstrated loyalty to the United States, the current geopolitical conditions in Belarus preclude security clearance eligibility while her parents remain there. Through counsel, Applicant takes broad aim at the Judge’s reliance on “speculative risks tied to external geopolitical conditions” that are beyond her control:

The term “external geopolitical conditions” does not exist in the adjudicative guidelines. It is a contrived and undefined phrase, seemingly invented by the judge to justify an irrational decision. By relying on this arbitrary standard, the judge has effectively created a new disqualifying factor—something that is impermissible under the guidelines.

. . .

The ruling does not follow the [] Adjudicative Guidelines and instead establishes a reckless precedent based on an undefined, extrajudicial standard. If upheld, this approach could disqualify countless loyal, qualified individuals based on nothing more than the mere existence of family in certain foreign countries. [Decision at 10, 11, 12.]

Contrary to Applicant’s argument, it is well settled in Guideline B cases that “a current and accurate assessment of the ‘geopolitical situation’ and the ‘security/intelligence profile of the country vis-a-vis the United States’ is crucial.” ISCR Case No. 07-14508 at 4 (App. Bd. Oct. 22, 2008). We have repeatedly and consistently held that the judge must consider the record evidence in the context of the nature of the foreign government involved, the intelligence-gathering history of that government, its human rights record, and the presence of terrorist activity. *E.g.*, ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007); ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017); ISCR Case No. 18-02802 at 3 (App. Bd. Nov. 6, 2019). In considering the allegation in the

context of the current geopolitical conditions in Belarus, the Judge was not inventing an “arbitrary standard” or “reckless precedent,” but rather was complying with his clear obligations under the Directive and precedent. We find this assignment of error to be without merit.

In a related argument, Applicant asserts that the Judge’s decision “appears to place excessive weight on hypothetical risks rather than actual evidence of foreign influence.” Appeal Brief at 8. It is well-established, however, that the Government is not required to prove an actual threat of coercion, inducement, or espionage. *See, e.g.*, ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009). Moreover, the Judge’s finding that “[t]he risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government”² is firmly grounded in Appeal Board precedent. ISCR Case No. 18-02802 at 3 (citing additional cases). Contrary to Applicant’s arguments, factors such as a relative’s obscurity or the failure of foreign authorities to contact those relatives in the past do not provide a meaningful measure of whether an applicant’s circumstances pose a security risk. *E.g.*, ISCR Case No. 07-13696 at 5. As the Judge’s decision makes clear, Applicant’s conduct, loyalty, and character are not in issue but rather the geopolitical conditions in which her parents live. Even a person of the highest character could be faced with circumstances under which she would be tempted to place the safety of loved ones ahead of competing interests. *E.g.*, ISCR Case No. 19-03991 at 5 (App. Bd. Dec. 14, 2021). Indeed, despite Applicant’s belief to the contrary, the “mere existence” of family members in foreign counties is well established as a possible basis for a security clearance denial. ISCR Case No. 15-05289 at 2 (App. Bd. Jan. 12, 2017). In this case, we find no reason to disturb the Judge’s challenged conclusion.

Here, the Judge reasonably found that Applicant has deep personal connections to her parents, who live in Belarus, which given current geopolitical circumstances presents a heightened risk, and concluded that Applicant failed to show it is unlikely she will be placed in a position of having to choose between those connections and the interests of the U.S. Applicant has not rebutted the presumption that the Judge considered all the record evidence, nor has she established that the Judge’s conclusions were arbitrary or capricious. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, and the record evidence 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).

² Decision at 8.

Order

The decision in ISCR Case No. 23-01463 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