KEYWORD: Guideline C; Guideline B

DIGEST: Equivocal nature of Applicant's statement of willingness to renounce Belgian citizenship supports Judge's adverse decision under Guideline C. Adverse decision affirmed.

CASE NO: 09-07072.a1

DATE: 12/14/2010

DATE: December 14, 2010

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 Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 30, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision–security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 14, 2010, after the hearing, Administrative Judge Jennifer I. Goldstein 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 mis-weighed the record evidence; whether the Judge's application of the pertinent mitigating conditions was erroneous; and

whether the Judge's whole-person analysis was erroneous. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made favorable findings under Guideline B, which are not at issue in this appeal. Under Guideline C, she made the following pertinent findings of fact: Applicant is an employee of a Government contractor. He is married, with a daughter. Applicant was born in Belgium, an ally of the U.S. and a member of the European Union. Belgium has cooperated with the U.S. in military operations.

Applicant moved to the U.S. to attend graduate school, earning a Ph.D. in 2004. He became a U.S. citizen in 2005, relinquishing his Belgian citizenship, as required by Belgian law. However, Belgium subsequently changed its law, permitting dual citizenship. Applicant applied to become a Belgian citizen again, in order to act as attorney-in-fact for his parents and parents-in-law, citizens and residents of Belgium. He submitted to an interview with the Belgian Consulate General, which was forwarded to a judge in Belgium, who approved Applicant's request for citizenship. Applicant was issued a Belgian passport, valid until December 2011. He has never used the passport, has written "annulled" over each page, and has surrendered it to his facility security officer. He signed a letter stating that he was willing to renounce his dual citizenship "if required by the United States of America." Decision at 3.

In the Analysis portion of the Decision, the Judge acknowledged Applicant's surrender of his passport. However, she also noted that Applicant had acquired his dual citizenship with Belgium by an affirmative act, rather than merely through operation of law by virtue of his birth. She stated that, while Applicant had expressed a willingness to renounce his Belgian citizenship, he had done so in a qualified manner. She stated, "He has not demonstrated he is unequivocally willing to renounce his dual citizenship." Decision at 7. Accordingly, she denied Applicant a security clearance under Guideline C.

Applicant contends that the Judge did not properly apply the Guideline C mitigating conditions. Among other things, he argues that the apparently conditional nature of his statement about giving up Belgian citizenship reflected merely a poor choice of words rather than equivocation. However, in addition to the letter which the Judge quotes (Exhibit Q), we also note Exhibit 2, Interrogatories, which contains a summary of Applicant's security clearance interview. During this interview Applicant addressed the issue of his dual citizenship: "The subject would relinquish his citizenship and passport from Belgium if needed for his employment." We also note his testimony: "I am partial to renouncing my Belgium citizenship. I would be willing to do so. I would need to explore the impact this has on my future dealings with my parents and parents-in-law if they were to become sick . . . and my need to act for them as power of attorney." Tr. at 34-35. The record evidence, viewed as a whole, is consistent with the Judge's conclusion about the equivocal nature of Applicant's willingness to renounce his dual citizenship, and it supports her adverse finding. *See, e.g.*, ISCR Case No. 08-05869 at 6 (App. Bd. Jul. 24, 2009) (Error for the Judge to fail to consider the equivocal nature of the applicant's willingness to renounce Australian citizenship.)

In support of his appeal, Applicant has submitted evidence not contained in the record, concerning his efforts to resolve the issue concerning his power of attorney. We cannot consider

new evidence on appeal. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). *See also* ISCR Case No. 08-05379 at 2 (App. Bd. Sep. 15, 2010).

Applicant's brief includes citations to Hearing Office cases which he contends support his case for a security clearance. We give due consideration to these cases. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See* ISCR Case No. 06-24121 at 2 (App. Bd. Feb. 5, 2008). Moreover, the cases cited by Applicant contain significant factual differences from his own, insofar as they concern instances of dual citizenship acquired by operation of law rather than by affirmative act. Additionally, one of the cases cited by Applicant was reversed on appeal.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made,'" both as to the mitigating conditions and the whole-person factors. *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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