KEYWORD: Guideline C

DIGEST: Applicant has applied for and received Latvian citizenship and a Latvian passport which she retains in part because she stands to inherit property in Latvia. Between 1997 and 2006 she has traveled to Latvia six times. The favorable evidence cited by Applicant is not sufficient to demonstrate that the Judge erred.

CASENO: 07-05354.a1

DATE: 06/06/2008

DATE: June 6, 2008

In Re:	)	
----------	)	ISCR Case No. 07-05354
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 August 31, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 26, 2008, after the hearing, Administrative Judge Philip S. Howe denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge's findings are based on substantial evidence; whether the Judge's adverse security clearance decision under Guideline C is arbitrary, capricious, or contrary to law.

The Judge found Applicant, a U.S. citizen by birth, had applied for and received Latvian citizenship. In March 1996, she applied for and received a Latvian passport. That passport expired in March 2006 and Applicant renewed it the same month. It will not expire until March 2016. Applicant retains this Latvian passport; she has not destroyed or surrendered it. Applicant traveled to Latvia in 1997, five times between 2003 and 2004, and in 2006. She maintains her Latvian citizenship, in part, because she stands to inherit property in Latvia.[1]

Applicant argues that the Judge's adverse clearance decision should be reversed because the Judge's findings contain multiple errors. Applicant also argues that the Judge's adverse decision should be reversed because she had informed her security officer that she was obtaining Latvian citizenship and a Latvian passport, and was under the reasonable belief that she had approval to due so. Applicant's arguments do not demonstrate that the Judge erred.

The Board's review of a Judge's findings is limited to determining if they are supported by substantial evidence—such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record. Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620, (1966).

After reviewing the record, the Board concludes that the Judge's findings are based on substantial evidence, or constitute reasonable inferences that could be drawn from the record. To the extent that there is error, the errors are harmless error in that they would not change the outcome

[1]Decision at 2.

of the case.[2] Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.,* ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. The presence of some mitigating evidence does not alone compel the Judge to make a favorable clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. An applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 06-11172 at 2 (App. Bd. Sep. 4, 2007). The Judge examined the relevant data and articulated a satisfactory explanation for his decision, "including a 'rational connection between the facts found and the choice made.'" *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). Therefore, the Judge's conclusion that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance"[3] is sustainable. *See Department of the Navy v. Egan,* 484 U.S. 518 (1988).

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

[2]For example, Applicant states her age is 46, not 47; she states she applied for Latvian citizenship because she was given an opportunity to due so, not for the purpose of inheriting land; she states while in Latvia she did not speak with a person about the value of her father's property, but about other properties; she states that she did not say she intends to build a summer home in Latvia someday in the future, only that there was a hypothetical scenario 20 years in th future. She might possibly build a summer home, but she had no specific plans to due so at this time.

[3]Decision at 5.

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

Signed; William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board