

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant’s ability to argue for an alternative interpretation of the record evidence is not sufficient to demonstrate that the Judge erred. Adverse decision affirmed.

CASE NO: 10-07127.a1

DATE: 12/19/2012

DATE: December 19, 2012

In Re:)	
)	
-----)	ISCR Case No. 10-07127
)	
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 February 29, 2012, 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). On April 16, 2012, DOHA issued an amendment replacing the previous SOR in its entirety.¹ The April 16 amendment alleged security concerns under Guidelines C and B.

¹The Decision refers to two amendments to the SOR. The first occurred on March 30, 2012. Decision at 1. The second amendment is the one described above, on the following April 16. At the hearing, the Judge stated that the February 29 SOR had been amended on March 30. Tr. at 5. There is no other reference in the record to this first amendment. Insofar as the April 16 amendment replaced the previous one in its entirety, there is no ambiguity in the Judge’s formal findings.

Applicant requested a hearing. On September 28, 2012, after the hearing, Administrative Judge Juan J. Rivera denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following findings pertinent to the issue on appeal: Applicant is an engineer working for a Defense contractor. He was born in Romania, receiving his education there. He completed a year of compulsory military service in that country. Applicant's wife is also Romanian. Their one offspring was born in the U.S.

Applicant came to the U.S. in the early 1990s to study. Offered a job with a U.S. company, he obtained a work visa, and his wife joined him. He received a master's degree from a U.S. university. He and his wife became U.S. citizens in the late 1990s. He has held a clearance since the mid-2000s without incident or concern. He is currently working on a doctoral degree.

Applicant's mother and in-laws are citizens and residents of Romania. He has contact with his mother and, through his wife, with his in-laws on a weekly basis. Applicant acquired a half-interest in a piece of real estate in Romania from his mother. To protect his interest in this property, Applicant renewed his Romanian passport and acquired a personal identification number from Romania. These documents enabled him to preserve his right of ownership. He anticipates inheriting additional property from his mother. He also has held a passport and citizenship in a third country. He has submitted his Romanian passport and his expired passport from the other country to his security officer.

Applicant and his wife have substantial financial interests in the U.S. Their home is valued at \$1.1 million, with a \$500,000 mortgage, and their combined incomes total about \$400,000. They also have retirement accounts and investments in the U.S.

Romania established a democratic government in 1989. It has a market-oriented economy and is largely free from terrorist activity. It has strengthened its relations with the West and is a member of NATO.

In the Analysis, the Judge noted record evidence of Romania's good relations with the U.S. He also stated that there is no evidence that intelligence operatives have sought information from Applicant through his family. However, given the extent of Applicant's family members in Romania and the frequency of his contacts with them, the Judge concluded that these family relations set forth security concerns under Guideline B. He also concluded that Applicant's property interests in Romania and his passport and identification number established concerns under Guideline C. Under the circumstances, he concluded that Applicant had not mitigated these security concerns. He noted, for example, Applicant's evidence that he will not be able to renounce his Romanian citizenship in the near future, the extent of his Romanian property holdings, and the

frequency of his contact with his Romanian family members. The Judge stated that these matters weighed heavily in favor of denying Applicant a clearance. The Judge concluded that Applicant had not met his burden of persuasion as to mitigation.

Applicant has cited to various aspects of the record which are favorable to him and which he believes justify the grant of a clearance. However, an ability to argue for an alternative interpretation of the evidence is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 09-07683 at 2-3 (App. Bd. Aug. 8, 2011). 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.’” *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). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Judge’s decision is **AFFIRMED**.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board