

KEYWORD: Guideline B

DIGEST: Evidence of Applicant’s connections to Russia and Pakistan were significant. Additionally, while holding a security clearance, Applicant traveled to Russia to meet women he had discovered on the internet. Applicant’s evidence was not sufficient to mitigate the heightened risk of foreign exploitation. Favorable decision reversed.

CASE NO: 10-07436.a1

DATE: 10/19/2011

DATE: October 19, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-07436
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 29, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 27, 2011, after the hearing, Administrative Judge Wilford H. Ross granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge's treatment of the pertinent mitigating conditions was erroneous and whether the Judge's whole-person analysis was erroneous. Consistent with the following, we reverse the Judge's decision.

Facts

The Judge made the following pertinent findings of fact: Applicant is seeking a security clearance in connection with his employment by a Defense contractor. He admitted the allegations in the SOR.¹

Applicant is a naturalized U.S. citizen born in Pakistan. His wife is a Russian citizen who lives with him in the U.S. She has submitted her application to become a U.S. citizen. Applicant's wife has a daughter who lives in Russia with the wife's parents, who are Russian citizens. Applicant's wife speaks to her mother occasionally by telephone.²

Applicant traveled to Russia between 2003 and 2005. He was employed by a Defense contractor at the time. He complied with security requirements while making these trips. The purpose of the trips was to meet in person Russian women with whom he had developed relationships over the internet.³

Applicant has lived in the U.S. since the late 1960s. He became a U.S. citizen in the late 1970s. He has held a security clearance since the late 1970s without incident.

Applicant has a sibling who lives in Pakistan and with whom he has no contact. His remaining siblings are U.S. citizens living in this country. Applicant has visited Pakistan six times between the early and mid-2000s. The main reason for these trips was to divorce a prior Pakistani wife and to visit his mother, since deceased. He also had a brother who lived in that country, but he also is deceased.

¹The SOR alleged the following: "a. Your spouse is a citizen of Russia residing in the United States. b. Your father-in-law, mother-in-law and step-daughter are citizens and residents of Russia. c. Your mother, brother, and sister are citizens and residents of Pakistan. d. You traveled to Russia on approximately ten occasions to meet Russian women you met on the Internet [in the mid-2000s] while holding a DoD security clearance. e. You traveled to Pakistan at least six times [in the mid-2000s]."

²Compare with Government Exhibit (GE) 2, Interrogatories, which includes a summary of Applicant's security clearance interview. Applicant certified the accuracy of the summary. At page 3, the summary states that Applicant's current wife has weekly telephone contact with her family. Department Counsel persuasively argues that neither the record as a whole nor the transcript page cited by the Judge support the finding regarding the frequency of Applicant's wife's contact with her family.

³The interview summary included in GE 2 states that, in addition to meeting Russian women during his trips, on one occasion he also met a woman who had traveled from Turkey. He could not recall her name. He could not recall the names of four other of his dates.

Russia has a poor human rights record. It has a significant intelligence capacity retained from the Soviet Union and an aggressive industrial espionage and intelligence collection program targeting the U.S. It sells technology that can be used to develop weapons of mass destruction. It has sold such technology to China, Venezuela, India, and Iran against the wishes of the U.S.⁴ Russia has invaded neighboring Georgia and is facing continuing rebellion in Chechnya. Pakistan is an ally of the U.S. in the war on terror. Nevertheless, terrorist organizations operate within its borders. Pakistan has a poor human rights record.⁵

Discussion

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. In rendering a final decision, an "agency must examine the relevant data and articulate 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 standard applicable in security clearance decisions "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 access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

In deciding whether the Judge's rulings or conclusions are erroneous, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

The security concern under Guideline B is as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties . . . may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline can

⁴*See* ISCR Case No. 07-17673 at 3-4 (App. Bd. Apr. 2, 2009)("There is a rational connection between an applicant's family ties in a country whose interests are adverse to the United States and the risk that the applicant might fail to protect and safeguard classified information").

⁵Administrative Notice documents discuss the operations of al-Qa'ida and the Taliban within Pakistan.

and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. Directive, Enclosure 2 ¶ 6.

The Directive requires a Judge to evaluate a Guideline B case in light of the geopolitical situation in the pertinent country as well as the personal circumstances of the applicant. Department Counsel cites to documents and evidence in the record which, he contends, are not consistent with the Judge's favorable decision. Although the Judge made findings about the geopolitical conditions regarding Russia and Pakistan, we note other matters in the Official Notice documents which have a significant bearing upon the proper outcome of the case. For example, tensions between the U.S. and Russia have increased in the past years, resulting in "ever-growing discord." Congressional Research Service, *Russian Political, Economic, and Security Issues and U.S. Interests*, January 29, 2010, at 24. Moreover,

[l]aw enforcement agencies have legal access to telephone, including cellular company clients' personal information and require providers to grant the Ministry of Internal Affairs and the Federal Security Service 24-hour remote access to their client databases. U.S. Department of State 2009 Human Rights Report: Russia, March 11, 2010, at 12.

We note the Annual Threat Assessment of the Director of the Defense Intelligence Agency, dated March 10, 2009, at p. 3, that "Russia remains the most capable cyber-threat to the U.S." We also note the Judge's findings concerning terrorist activity in Pakistan. *See* ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007).⁶ Department Counsel persuasively argues that the Judge did not bring the full scope of Russia's and Pakistan's problematic relationships with the U.S. to bear in his analysis of Applicant's security significant conduct.

In addition to Official Notice materials concerning Russia and Pakistan, the record contains evidence of Applicant's personal circumstances, those regarding his family and those regarding his own foreign travels. Department Counsel notes evidence and SOR admissions that Applicant had traveled to Russia on numerous occasions to meet women he had first discovered through the Internet, on one occasion being defrauded out of \$200.⁷ This suggests the relative ease with which Internet itself can become a means of exploitation. In any event, *compare* Applicant's circumstances with those described in ISCR Case No. 09-06831 (App. Bd. Mar. 8, 2011), in which

⁶"In Foreign Influence cases, the nature of the foreign government involved, the intelligence gathering history of that government, and the presence of terrorist activity are important considerations that provide context for the other record evidence and must be brought to bear upon the Judge's ultimate conclusions in the case."

⁷"One of the [Internet] sites when you went to Russia, somebody got some money from you and then you didn't get it back . . . I never met that lady and she just wanted to meet me, you know, and got \$200 and that's it . . . I did not educate myself about Russia . . . There are people who will pose as woman and get money to meet you and then they really aren't a candidate at all[.]" Tr. at 84.

the applicant's security significant conduct included the use of international dating services and frequent trips to Russia to meet women he had discovered thereby.

Applicant's personal circumstances, as described in the record, are such as to cast doubt upon the Judge's conclusion that Applicant had demonstrated mitigation. Department Counsel notes that Applicant traveled to meet the woman who became his sixth, and current, wife on the impression that she was unmarried, learning otherwise during his visit. Evidence of foreign travel and of social interaction with foreign persons may be of limited significance, considered in and of itself. However, in Applicant's case, evidence of his meeting foreigners over the internet and engaging in foreign travel in order to further his relationships with them, all while holding a security clearance, viewed cumulatively, supports Department Counsel's argument that Applicant's personal interests may conflict with the protection of national security. Department Counsel also points to evidence that Applicant's in-laws reside in Russia, thereby constituting a possible avenue through which he could be subjected to coercion. *See* ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005).⁸

The gravamen of Department Counsel's appeal argument is that the Judge failed properly to analyze the record evidence in accordance with the criteria set forth in the Directive. Given the Judge's findings and the evidence cited above, we are persuaded by Department Counsel's argument that the Judge erred in his mitigation analysis. The Judge concluded that three disqualifying conditions applied to Applicant's case—7(a),⁹ 7(b),¹⁰ and 7(d).¹¹ Department Counsel's argument focuses on the extent to which the record as a whole is not sufficient to mitigate the security concerns addressed by 7(a) and (d). That is, the Judge concluded that Applicant's family and personal connections within Russia and Pakistan, and his sharing living quarters with his Russian wife, entail a "heightened risk" of foreign exploitation, etc. Department Counsel argues that Applicant has not met his burden of persuasion that it is unlikely that he would be placed in a position of having to choose between the interests of his foreign connections and the interests of the U.S. He contends that the Judge failed adequately to explain his conclusion that Applicant's ties to his foreign relatives were relatively minimal. *See, e.g.,* ISCR Case No. 03-26176, *supra*. Moreover, although Applicant stated that his contacts with his stepdaughter are not significant, due to the language barrier, there is nothing in the record to suggest that his wife's, or his, *concern for*

⁸"As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse."

⁹Directive, Enclosure 2 ¶ 7(a): "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion[.]"

¹⁰Directive, Enclosure 2 ¶ 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information[.]"

¹¹Directive, Enclosure 2 ¶ 7(d): "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion[.]"

her welfare is equally insignificant. The evidence does not support a conclusion that Applicant has rebutted the presumption that he has ties of obligation or affection to his foreign in-laws and stepdaughter. When these connections are viewed alongside evidence that (1) Applicant's wife is a Russian citizen living with him in the U.S. and frequently telephones her family abroad and (2) he has taken frequent trips to Russia and Pakistan, it is reasonable to believe that these connections could become "a means through which Applicant might come to the attention"¹² of foreign authorities or organizations bent on acquiring U.S. classified information. ISCR Case No. 08-03798 at 2 (App. Bd. Jan. 21, 2010). There is little in the Judge's conclusory analysis of Applicant's ties with the U.S. and abroad to support his ultimate finding that Applicant had mitigated the "heightened risk" of foreign exploitation which he found to have been raised in this case, either under the mitigating conditions or through a whole-person analysis.¹³

To sum up, the record contains evidence and admissions of the following: (1) Applicant has a sibling who is a citizen and resident of Pakistan; (2) while holding a security clearance, he has traveled to Russia and Pakistan numerous times during the early 2000s; (3) while holding a security clearance, he has used the Internet to find foreign women and then has traveled to meet them under circumstances that may conflict with the protection of national security; (4) Applicant's wife, who lives with him, is a citizen of Russia; (5) her parents and daughter are citizens and residents of Russia; (6) Applicant's wife speaks to her Russian family members by telephone on a weekly basis; (7) Russia monitors Internet, e-mail, and telephone communications; (8) Russia is an avid collector of U.S. protected information; (9) Russia and the U.S. are experiencing discord in their relations; and (10) terrorist organizations, including al-Qa'ida and the Taliban, operate from within Pakistan. Taken cumulatively, this evidence is not consistent with the Judge's favorable decision. The Judge's decision runs counter to the weight of the record evidence. *See, e.g.*, ISCR Case No. 03-22861, *supra*. Accordingly, the decision is not sustainable.

Order

The Judge's favorable security clearance decision is REVERSED.

¹²Q: Now, you had to apply to the Russian Embassy to get a Visa to go there, right? A: Oh, yeah. Every time, and they really are very tight about that. Q: Okay. So, [they] pretty much know that you're an American going there? A: They very much knew from the embassy point of view, but once I landed there, nobody knew. It's really the embassy and official knows about it." Tr. at 83.

¹³Department Counsel asks us to restrict application of Mitigating Condition 8(b) to mitigation of Disqualifying Condition 7(b). We do not believe that such a restriction is appropriate. 8(b) states

there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest[.] Directive, Enclosure 2 ¶ 8(b).

Although there is some correspondence to 7(b), the question of conflict of interest touches on several disqualifying conditions.

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

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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