

KEYWORD: Guideline B

DIGEST: The Judge concluded that Applicant’s close family ties and ongoing friendships in Russia raised foreign influence concerns that are not fully mitigated. The Judge’s conclusions are supported by the record evidence. Adverse decision affirmed.

CASENO: 12-05839.a1

DATE: 07/11/2013

DATE: July 11, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-05839
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 1, 2012, DoD 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 April 25, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge

Elizabeth M. Matchinski denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: (1) whether DISCO erred in revoking his interim clearance in April, 2012; and (2) whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found: Applicant emigrated from his native Russia to the United States in 1990. During his life in Russia, Applicant became a member of a communist youth organization, and later became a member of the communist party. He attended military and armed forces academies, and spent a career as an officer in the Soviet army. He held a Russian security clearance. He became a naturalized U.S. citizen in the mid-1990's. After becoming a U.S. citizen, Applicant has traveled to Russia on multiple occasions, to visit his siblings. He plans to travel to Russia in the future to visit them. Applicant's siblings are Russian resident citizens and received financial support from Applicant in the past. Applicant has telephone contact with one sibling about once a month. He has telephone contact with the other sibling every two to three months. Applicant feels an obligation to support this sibling financially. One of Applicant's siblings retired from an institute affiliated with the Russian space program.

Prior to 2007, Applicant made trips to Russia to visit with close friends from his youth whom he met in a Soviet military school or during his service as an officer in the Soviet Army. He maintains friendships with five Russians, two with former service in the Russian army, two who teach in Russian universities, and one who is a former professor and is now a priest. Applicant has had particularly friendly relations with two of these men. He has 8 to 15 contacts with one annually through emails and telephone, and 8 or 9 contacts with the other by email or telephone. Applicant tries to contact one of the men when he is in Russia.

Applicant and his wife bought her parent's apartment in Russia in 2003 for \$40,000. The apartment needs serious renovation and repair, and they have had no success in selling it. Applicant and his spouse own a lot, vacation property, and a condominium in the United States. They have retirement assets of approximately \$800,000. Applicant's supervisor thinks Applicant has been a consummate professional with high morality and ethics.

Russia has an uneven human rights record. Individuals who threaten powerful state or business interests are subject to political prosecution as well as harsh conditions of detention. Uncensored public discourse is limited. There is widespread government and law enforcement corruption, physical abuse and hazing in the military, and restrictions on the right to free assembly. U.S. and Russian relations have improved since 2009. At the same time, Russia inherited a significant intelligence capability from the former Soviet Union, and continues to focus, with increasing sophistication, on collecting sensitive and protected U.S. technologies through its intelligence services. The U.S. Office of the National Counterintelligence Executive reports a possible increase in Russian collection over the next several years because of the many Russian immigrants with advanced technical skills working for leading U.S. companies who may be targeted for recruitment by Russian intelligence services.

The Judge concluded: Applicant's ties to Russia remain a security concern. Applicant continued to maintain relationships with some former military classmates even after he left his old life in Russia behind. These relationships, along with his close bonds of affection to his siblings, raise concerns that he could be targeted for exploitation, pressure, or coercion by the government of Russia in ways that might also threaten U.S. security interests. Applicant intends to travel to Russia in the future, and U.S. intelligence authorities are concerned about a possible increase in Russian collection of sensitive and protected U.S. technologies over the next several years. Despite Applicant's commitment to a new life consistent with democratic principles and a spirit of openness, the totality of his history, including the fact that he held a Russian security clearance when he was a "hardcore communist," and his ongoing relations since 1990 with Russian citizens, it is not clearly consistent with the national interest to grant Applicant a security clearance.

Applicant states that in July 2010 he was granted an interim clearance that was later revoked by DISCO in April, 2012. He asserts that no single new fact or bit of derogatory information was discovered as a result of the 2.5 year-long investigation, so either the initial granting of the interim clearance was a mistake, or the revocation was a mistake and the interim clearance should have been reinstated. Applicant claims that communication from DISCO indicating that derogatory information developed in his case was "just an attempt to save face." In part, Applicant may wish to indicate the hardship he suffered by taking a position based on the granting of the interim clearance and then experiencing difficulties when the interim clearance was taken away. He states that the issue was raised during the hearing, but was not addressed properly by the Judge. He maintains that the facts regarding his connections with Russia were included in his security clearance application, and thus should not have been a surprise to anyone. Applicant also appears to seek DOHA's judgment regarding actions by other agencies that are pertinent to his case.

The methods and scope of investigations and the processing of Applicant's case prior to the issuance of an SOR are outside the scope and review of the Appeal Board. *See, e.g.*, ISCR Case No. 02-20947 at 4 (App. Bd. Jun 18, 2004). Thus, there is no procedural issue that is properly before us. The Board does note that the Judge addressed Applicant's concerns regarding the interim clearance at some length in a footnote in her decision.¹ The Judge noted that the government is not estopped from reconsidering the security significance of an applicant's conduct and that security clearance decisions are based on a determination of whether it is clearly consistent with the national interest to grant eligibility.

Applicant takes issue with the Judge's citing of one of his sibling's negative opinion of the United States as a factor to be considered when evaluating the presence of a heightened risk posed by his relationship with that individual. He argues that his sibling never expressed any negative opinion about the United States. The Judge based her finding on hearing testimony wherein Applicant stated, "I'm proud of this country and sometimes I get in some arguments with my [sibling] when I'm visiting Russia because they argue in Russia right now with regard to the United States, they had had it, they had had it and they said oh, the United States, all they want is just to hurt Russia. . . ." ² After considering this testimony, the Board concludes that the Judge's

¹Decision at 4.

²Tr. At 70.

characterization of Applicant's description as a negative opinion of the United States is a reasonable interpretation of the evidence, and was properly considered as a factor by the Judge when assessing the risks created by Applicant's relationship with his sibling. Applicant has not established error.

Applicant states that he is making no specific claims of legal error regarding the Judge's analysis, but indicated that he feels that a common sense determination under the Adjudicative Guidelines was "not used consistently through the decision." He asserts that he does not understand how the Judge could find that he is committed to the United States and has no allegiance to Russia, yet his close family ties and ongoing friendships in Russia raise foreign influence concerns that are not fully mitigated. He argues that the Judge's analysis and conclusions lack substantiation.

The Judge concluded that a "heightened risk" existed in this case and that risk is greater than the normal risk inherent in having a family member living under a foreign government. She noted that the nature and strength of the family ties, the nature of Russia's government, its relationship with the United States and its human rights record are all relevant in assessing whether there is a likelihood of vulnerability to government coercion. Regarding Applicant's Russian friends, the Judge noted that two of them are retired Army officers and one is currently a professor at a Russian institute. The Judge found that these relationships were maintained long after Applicant left Russia, are ongoing, and are still significant even though most of them have diminished in strength over the years. The Board concludes that the Judge's analysis of "heightened risk" and her conclusions about the potential for foreign influence inherent in Applicant's situation are supported by the record evidence, and that same record supports her ultimate conclusion that Applicant's ties to Russia remain a security concern.

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*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party'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. See, e.g., ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

The bulk of Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence. Applicant repeatedly emphasizes that none of his Russian contacts listed in the SOR worked in intelligence or had any contact with intelligence organizations. However, the potential risks arising out of contacts with persons in other countries is not limited to situations where the contacts have ties to foreign intelligence operations.

A review of the Judge's decision reveals that, regarding Guideline B, the Judge listed the potentially applicable mitigating conditions and then discussed several components of those factors in her analysis. The Board finds no error in the Judge's ultimate conclusions regarding mitigation. After reviewing the record, the Board concludes 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board