

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant asserts that he has mitigated concerns regarding his foreign mother in law. His contention relies on new evidence which we cannot consider. Adverse decision affirmed.

CASENO: 13-01305.a1

DATE: 09/05/2014

DATE: September 5, 2014

In Re:	)	
	)	
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	)	
Applicant for Public Trust Position	)	

**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 trustworthiness designation. On April 4, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness 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 July 25, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Rita C. O'Brien denied Applicant's request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in concluding that Applicant's case raised security concerns and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline C are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

The Judge made the following findings pertinent to the issues raised on appeal. Applicant was born in the Soviet Union in what is now Ukraine. Educated in the Soviet Union, he received a Ph.D. there in the late 1980s. Applicant married his wife in the mid-1980s, and the couple moved to the U.S. two years later in order for Applicant to pursue post-doctoral studies. Applicant and his wife are both naturalized citizens holding dual citizenship with Russia. Their son was born in Russia and holds dual citizenship as well. He works in the U.S. Applicant's wife and son both hold Russian passports, although the son's is expired. Applicant's mother-in-law is a citizen and resident of Russia. Applicant's trustworthiness application stated that he is in contact with his mother-in-law weekly, although at the hearing he testified that he was in touch with her a couple of times a year. Applicant's wife speaks with her mother once a week by phone or by Skype.

Applicant owns his home in the U.S. It is valued at about \$180,000. He and his wife also have savings in the U.S., including about \$130,000 from the sale of properties in Ukraine.

The U.S. and Russia share strategic interests in counter-terrorism, reduction of strategic arsenals, and control of proliferation of weapons of mass destruction. However, tensions between the two countries have increased since the Russian invasion of the Republic of Georgia in 2008. These tensions have further increased since Russia established a military presence on the Crimean peninsula, declaring it part of the Russian Federation. Russia targets U.S. personnel with access to sensitive computer network information. Russia is a leading intelligence threat to the U.S., pursuing proprietary information from U.S. companies and research institutions regarding defense, energy, and dual use technology. Russia provides military and missile technology to China, Iran, Syria, and Venezuela.

Russia has a poor human rights record that includes torture and excessive use of force by law enforcement. Russian officials have engaged in electronic surveillance without authorization and have entered homes without warrants. Russian authorities can access internet activity and monitor telephone calls in real time. Russia has placed military forces on the border of eastern Ukraine. Militants have kidnaped or detained journalists and international observers. The State Department has warned U.S. citizens to postpone non-essential travel to Ukraine and all travel to the Crimea.

### **Analysis**

The Judge cited to Russia's intelligence-gathering posture regarding the U.S., its human rights record, and its monitoring of electronic communications. She also noted evidence that Applicant shares his home with his wife, a dual citizen, that his son is also a dual citizen, and that his mother-in-law is a citizen and resident of Russia. She stated that Applicant had not rebutted the presumption that he has ties of affection for his mother-in-law. She concluded that these family connections, viewed in connection with the geopolitical situation in Russia, presented a heightened risk of foreign influence, thereby raising concerns under Guideline B. She concluded that he had not mitigated these concerns, given evidence of his contact with his mother-in-law. In the whole-person analysis, the Judge stated that, through his wife, Applicant will continue to have close ties to a citizen and resident of Russia, a country that monitors private communications and targets U.S. persons and interests for sensitive information.

## Discussion

Applicant challenges the Judge's conclusion that his circumstances raised trustworthiness concerns. In doing so, he presents information from outside the record, which we cannot consider. Directive ¶ E3.1.29. *See also* ADP Case No. 08-09058 at 2 (App. Bd. Dec. 18, 2009).

The Directive presumes a nexus between admitted or proven circumstances under any of the Guidelines and an applicant's eligibility for a trustworthiness designation. *See, e.g.*, ADP Case No. 07-07799 at 2 (App. Bd. Dec. 5, 2008). The nature of the foreign government, its intelligence-gathering activity, and its human rights record are important considerations as well. In-laws are a class of persons who present a potential risk. *See, e.g.*, ADP Case No. 08-10099 at 2-3 (App. Bd. Jan. 28, 2011). Given tensions between the U.S. and Russia over that country's conduct regarding Ukraine; Russia's status as an active seeker of U.S. protected information; Applicant's and his families' dual citizenship; and his mother-in-law's Russian citizenship, the Judge did not err in finding heightened risk that Applicant could be pressured to divulge sensitive information.<sup>1</sup> Applicant has not rebutted the presumption of nexus between his circumstances and the concerns described under Guideline B.<sup>2</sup>

Although the Judge found against Applicant based on the totality of the family connections described above, her mitigation analysis focused primarily on his mother-in-law's status as a citizen and resident of Russia. Applicant contends that he has mitigated the concerns arising from his

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<sup>1</sup>*See* Directive, Enclosure 2 ¶ 7(a): "Contact with a foreign family member . . . who is a citizen of . . . a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion[.]" Directive, 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[.]"

<sup>2</sup>*See* Directive, Enclosure 2 ¶ 6: "Foreign contacts and interests may be a . . . concern if the individual has divided loyalties . . . may be manipulated or induced to help a foreign person . . . 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 and should consider the identity of the foreign country in which the foreign contact . . . 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[.]"

contact with his mother-in-law. That contention relies on new evidence, which we cannot consider.

We have given Applicant's argument due consideration, finding the Judge's analysis to be consistent with the record that was before her. Applicant's dual citizenship and that of his immediate family are sufficient to support the Judge's adverse decision, given the geopolitical situation between the U.S. and Russia. We also note the Judge's citation to inconsistent statements Applicant made regarding the extent of his connections to his mother-in-law, which is also relevant in evaluating his case for mitigation. To a certain extent, Applicant's argument involves a disagreement with the apparent weight the Judge assigned to his dual citizenship and that of his wife and son. However, Applicant has not shown that the Judge weighed the totality of the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 06-14978 at 2 (App. Bd. Jan. 18, 2008).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.*, ADP Case No. 12-04343 at 3 (App. Bd. May 21, 2013). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert denied*.

### **Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael 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