

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant was born in the United States. She was eight years old when her family immigrated to Canada. Applicant became a Canadian citizen. Applicant married a Belgian citizen and moved to Belgium with her husband. She automatically acquired her Belgian citizenship as a result of her marriage. Except for a period of around seven months in the United States, Applicant has been a Belgium resident since 1987. Applicant is required by law to vote in Belgian elections. She has voted in five Belgian elections and intends to vote in Belgian elections in the future. Applicant and her husband have five Belgian-born children. Her four older children received their U.S. citizenship in July 2007. Applicant was not able to transfer her U.S. citizenship to her children because she did not live in the United States for a period of two years after age 14. Her children acquired their U.S. citizenship through their grandparents. She is in the process of acquiring U.S. citizenship for her youngest child. Adverse decision affirmed.

CASENO: 07-00434.a1

DATE: 07/18/2008

DATE: July 18, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-00434
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 24, 2007, 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). Applicant requested a hearing. On March 24, 2008, after the hearing, Administrative Judge Juan J. Rivera 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 made the following relevant findings: Applicant is 40 years old. She has worked for the North Atlantic Treaty Organization (NATO) at the professional/managerial level since March 2006. She has had interim access to NATO classified information for approximately two years. There is no evidence that Applicant has ever compromised classified information or that she has failed to comply with rules and regulations concerning the protection of classified information.

Applicant was born in the United States in 1968. When she was eight years old, the whole family immigrated to Canada. Applicant became a Canadian citizen, and attended high school and her first year of college in Canada. Her parents are dual citizens of the United States and Canada and currently reside in Canada.

In 1987, Applicant married a Belgian citizen and moved to Belgium with her husband. She automatically acquired her Belgian citizenship as a result of her marriage. Except for a period of around seven months from 1999 to 2001, when Applicant was working for a U.S. company in the United States, Applicant has been a Belgium resident since 1987. As a Belgium citizen, Applicant is required by law to vote in Belgian elections. She has voted in five Belgian elections and intends to vote in Belgian elections in the future. Applicant most recently voted in municipal elections in Belgium in October 2006.

Applicant and her husband have five Belgian-born children. Her four older children received their U.S. citizenship in July 2007. Applicant was not able to transfer her U.S. citizenship to her children because she did not live in the United States for a period of two years after age 14. Her children acquired their U.S. citizenship through their grandparents. She is in the process of acquiring U.S. citizenship for her youngest child.

Applicant completed the last three years of her bachelor's degree in Belgium. Additionally, she received a master's in 1995, a doctorate (Ph.D.) in 2000, and another master's in 2006. Applicant attended Belgian universities as a Belgian national and received student grants. As a Belgian citizen, she is entitled to and has received social welfare benefits such as healthcare, unemployment benefits, child allowances, and educational grants. She is also entitled to a small government pension. Applicant and her husband own no property either in the United States or Belgium. She asserted they never intended to live permanently in Belgium and never purchased a home. In 1999, Applicant took a job in the United States with the idea of moving permanently to the United States; however, her husband did not get a job, and they had to return to Belgium. The opportunity never presented itself again. Applicant owns bank accounts both in Belgium and in the United States. She also voted in U.S. elections in 1996 and 2006, and is registered to vote in the 2008 U.S. Presidential election.

Applicant was interviewed in September 2006 by a government investigator. The investigator noted in his summary of Applicant's interview that she was not ready to renounce her Canadian or Belgian citizenship. At her hearing, Applicant expressed her willingness to renounce her Belgian citizenship, but presented no evidence of any efforts taken in that regard. She also expressed a preference for the United States. Applicant held Canadian and Belgian passports which she surrendered in 2005.

On appeal, Applicant argues that the Judge's adverse clearance decision should be reversed because the Judge erred as to some of his findings. She also argues that the Judge's adverse decision is arbitrary, capricious and contrary to law because the Judge failed to take into account significant record evidence, failed to articulate a satisfactory explanation for material conclusions, failed to consider an important aspect of the case, and reached an overall decision that ran contrary to the record evidence. The Board does not find Applicant's arguments persuasive.

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 characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable.

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. *See, e.g.*, ISCR Case No. 07-05809 at 2 (App. Bd. May 27, 2008).

The Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e.g.*, ISCR Case No. 04-08623 at 4 (App. Bd. Jul. 29, 2005). He is not required to cite or discuss every piece of record evidence. *See, e.g.*, ISCR Case No. 04-01961 at 2 (App. Bd. Jul. 12, 2007). 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 found in favor of Applicant under Guideline B. However, he reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome all the government's security concerns under Guideline C. 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. 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)). "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). Accordingly, the Judge's adverse decision under Guideline C is sustainable.

Order

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

Signed: Michael D. Hipple

Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed; William S. Fields _____

William S. Fields

Administrative Judge

Member, Appeal Board