

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 August 13, 2008, 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 February 6, 2009, after the hearing, Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s findings of fact were based upon substantial record evidence; whether the Judge did not consider all the record evidence; whether the Judge erred in his weighing of the evidence; whether the Judge’s whole-person analysis failed to satisfy the requirements of the Directive; and whether the Judge erred in failing to conclude that Applicant had mitigated the security concerns in his case. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a technician employed by a Defense contractor. He served in the Army for nine years. After leaving the Army he worked in the Middle East, where he met his wife, who was born and raised in Russia. They married in the mid-1990s and Applicant’s wife became a U.S. citizen in the mid-2000s. They have one son, born in the U.S. Applicant’s father-in-law works for a Russian state university. His mother-in-law retired from teaching science seventeen years ago and has been a homemaker ever since. Applicant speaks no Russian and has had limited direct contact with his in-laws, having seen them during visits to Russia or during their visits to the U.S. His wife speaks to her parents “by telephone several times per month.” Decision at 3. Recently, Applicant and his wife invested one-half of the \$100,000 purchase price of some property in southern Russia. The purpose was to develop a hotel or bed and breakfast to be operated by his in-laws upon the retirement of his father-in-law. Applicant and his wife earn \$60,500 and \$51,000 respectively. They own two pieces of real estate in the U.S. of a total value of \$601,900. Applicant’s character references describe him as honest, reliable, and hard-working. Applicant also submitted favorable character evidence concerning his father-in-law, provided by those with personal knowledge of him.

“Russia has an active, recent, and ongoing intelligence collection program targeting the U.S.” *Id.* at 4. Along with China it is the most aggressive collector of sensitive and protected U.S. technology. It is a leader in industrial espionage against the U.S. “Russian officials reportedly engage in human rights abuses, including abductions, torture, coerced confessions, and unlawful surveillance of citizens and visitors.” *Id.*

The Board concludes that the Judge’s material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”) Applicant contends that the Judge did not consider or did not properly weigh evidence which he submitted in mitigation, such as the strength of his ties to the U.S., his service to the U.S. in combat zones, and evidence concerning the nature of his relationship with his in-laws. A Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e.g.*, ISCR Case No 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). He is not required to discuss each and every piece of record evidence in making a decision. *See* ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007). Furthermore, 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). We have considered Applicant’s appeal brief in light of the Judge’s decision and the record evidence. We find no basis to conclude that the Judge did not consider the entire record or that he weighed the evidence in an arbitrary or capricious manner.

Applicant takes exception to the Judge’s conclusion that Applicant was potentially vulnerable to pressure or influence because of the circumstances of his in-laws. Applicant argues that the Judge’s analysis seems to equate his relationship with his in-laws to his wife’s relationship with her parents. He insists that he deserves the right to have his own record and relationship examined, and he states that the concept that his relationship with his wife’s parents is as close as hers simply because he is close to his wife is deeply flawed and denies him due process rights. Applicant asserts that his relationship with his wife’s parents is inherently different from his wife’s relationship with her parents. Applicant’s arguments on this point are not persuasive.

There is nothing in the Judge’s decision indicating that he equates Applicant’s relationship with his wife’s parents with his wife’s relationship with them. Rather, the Judge gave appropriate recognition to the fact that, through his loving relationship with his wife, Applicant has a legitimate, serious interest in the welfare of her parents who are citizens and residents of Russia. The Board has recognized that, 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. *See, e.g.*, ISCR Case No. 01-03120 at 4 (Feb. 20, 2002). A review of the record evidence convinces the Board that the presumption has not been overcome in this case. Accordingly, the Judge did not err in considering the immediate family members of Applicant’s spouse as raising unmitigated security concerns.

We conclude that the Judge's whole person analysis complies with the requirements of Directive ¶ E2.2.1. The Judge's decision noted Applicant's favorable evidence as to character, as well as evidence concerning the good character of his wife and in-laws. However, he balanced that against evidence that Applicant's foreign in-laws and property holdings are in Russia, which has a problematic human rights record and which conducts espionage against the U.S. The Board concludes that the Judge considered the totality of Applicant's circumstances in reaching his decision. *See* ISCR Case No. 05-03948 at 3-4 (App. Bd. May 21, 2007); ISCR Case No. 04-09959 at 6 (App. Bd. May 19, 2006). In support of his appeal, Applicant has referred the Board to numerous other industrial security cases, both from the Hearing Office and the Board. He contends that these other applicants were granted clearances under factual circumstances similar to his own. We give due consideration to them. However, each case "must be decided upon its own merits." Directive ¶ E2.2.3. The Board does not review a case *de novo*. The Board will reverse a Judge's decision only if it is arbitrary, capricious, or contrary to law. Directive ¶¶ E3.1.32.3 and E3.1.33.3.

After reviewing the record, the Board concludes that 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)). As stated above, the Judge's conclusion that, through his wife, Applicant has close ties to his Russian in-laws is consistent with the record evidence. The Judge's further conclusion that Applicant had failed to mitigate the security concerns arising from this relationship is also consistent with the record evidence. *See* ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002) (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). On this record, the Judge's decision that "it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance" is sustainable. Decision at 9. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security'").

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, 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