

KEYWORD: Guideline B; Guideline E

DIGEST: Applicant has not demonstrated that Judge erred in concluding that Applicant's two false statements and her foreign contacts were not mitigated.. Adverse decision affirmed.

CASENO: 10-07893.a1

DATE: 09/07/2011

DATE: September 7, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-07893
)	
Applicant for Security Clearance)	

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 November 26, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as

amended) (Directive). Applicant requested a decision on the written record. On June 17, 2011, after considering the record, Administrative Judge Joan Caton Anthony 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 erred in concluding that Applicant's answer to the security clearance application (SCA) and subsequent interview were deliberately false and whether the Judge erred in her application of the pertinent mitigating conditions. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a senior program coordinator and liaison for a Government contractor. This is her first application for a security clearance.

Born and raised in Thailand, Applicant came to the U.S. in the mid-2000s. She became a U.S. citizen in the late 2000s. Question 6 of Section 20B of her SCA inquired the following: "Have you EVER held or do you now hold a passport that was issued by a foreign government?" She answered "yes," and stated that she had turned in an expired Thai passport. She did not advise that she possessed a valid Thai passport with a July 28, 2010, expiration date.

During a subsequent interview, Applicant initially denied having a current Thai passport. However, later in the interview, she admitted that she possessed one. She stated that she had not reported it because she was concerned that it might be a reason for her to be denied a clearance.

Applicant's mother is a citizen and resident of Thailand, as is her sibling. The two live at the same address. Applicant has telephone contact with her mother once a week and with her sibling once or twice a year. She also maintains internet contact with numerous citizens and residents of Thailand. She maintains contact with some of them through social network sites. She does not know the occupations or titles of many of these persons.

In her analysis of Applicant's case, the Judge concluded that her family ties raised security concerns under Guideline B. She also concluded that Applicant's failure (1) to list her current Thai passport on her SCA and (2) to mention it initially during her interview were deliberate. She concluded that these falsifications were recent and significant infractions that "go to the very heart of her eligibility for a security clearance." Decision at 11. Accordingly, the Judge concluded that Applicant had failed to meet her burden of persuasion as to mitigation.

In her appeal brief, Applicant claims that the Judge erred in her findings of deliberate falsification. However, after examining the record, we conclude 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.").

After considering the record as a whole, we conclude that Applicant's foreign contacts¹ and her two false statements support the Judge's adverse conclusions regarding mitigation, under both Guideline B and Guideline E. The record supports a conclusion 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 Judge's adverse decision is sustainable on this record. "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). See also Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

Order

The Judge's adverse security clearance decision is AFFIRMED.

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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

¹Applicant's internet contact with numerous Thai citizens was not alleged as a security concern. However, it is a matter that the Judge could consider on the issue of mitigation. See, e.g., ISCR Case No. 08-06859 at 4 (App. Bd. Oct. 29, 2010).