

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant notes that she has only two brothers, rather than the three alleged in the SOR. The Judge’s findings and analysis refer only to two brothers, in accordance with the other evidence before him. His unfavorable formal finding under 2.c does not mean that he exaggerated the security significance of Applicant’s family connections in Ukraine, nor is there reason to believe that the wording of the SOR impaired Applicant’s ability to prepare her case for mitigation. Adverse decision affirmed..

CASENO: 14-06788.a1

DATE: 10/21/2016

DATE: October 21, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-06788
)	
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 July 10, 2015, DoD 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 May 12, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 are erroneous; whether the Judge failed to consider all of the evidence; and whether the Judge weighed the evidence in a manner that 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, raised, and educated in Ukraine. She came to the U.S. in the early 2000s, marrying a U.S. citizen at that time. She became a naturalized citizen in the late 2000s and has worked for a Federal contractor since 2008.

Applicant’s mother is a Ukrainian citizen who is a resident alien of the U.S. She divides her time between Ukraine and this country. She worked for a Ukrainian government organization. Applicant’s father receives a government pension and spends his entire time in Ukraine. The mother has applied for resident alien status for Applicant’s two brothers, which was pending as of the close of the record. The brothers plan to move to the U.S. as soon as they receive their green cards. The older brother was at one time a social worker for the government and currently works in a Ukrainian industry. The younger brother lives in another European country and works for a U.S. corporation. Applicant communicates with her parents several times a week.

In 2012, Applicant stated to a clearance investigator that she was not willing to renounce her Ukrainian citizenship or surrender her Ukrainian passport. She was concerned that, were she to surrender her citizenship, she would not be permitted to reapply for it at a later date. In January 2016, Applicant surrendered her Ukrainian passport to her facility security officer.

Russia recently seized the Crimean peninsula in response to actions of the Ukrainian parliament in establishing a new government. Russia has been accused of orchestrating attacks by separatist factions, and there have been human rights abuses resulting from Russian occupation of Crimea. Russia has continued to supply heavy weapons to separatists, and Ukrainian security is under threat. Separatist groups have kidnapped foreigners, including U.S. citizens. Russia is an aggressive collector of U.S. proprietary information. It is “one of the most capable and persistent intelligence threats and aggressive practitioner of economic espionage against the U.S.” Decision at 5. This is a growing threat to U.S. security.

The Judge's Analysis

The Judge entered favorable findings under Guideline C. In resolving the Guideline B allegations against Applicant, the Judge cited to evidence of her close family ties in Ukraine and her frequent contact with them, circumstances that render her vulnerable to coercion. He also noted that Applicant was not willing to renounce her Ukrainian citizenship and only recently surrendered her passport to her facility security officer. Given Ukraine's instability, Russia's support for separatists in that country, and the governmental jobs held by some of her family members at one time or another, the Judge concluded that Applicant had not mitigated the Guideline B concerns.

Discussion

Applicant's brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant notes that she has only two brothers, rather than the three alleged in SOR ¶ 2.c. In fact, the Judge's findings and analysis refer only to two brothers, in accordance with Applicant's SOR response and the other evidence before him. His unfavorable formal finding under 2.c does not mean that he exaggerated the security significance of Applicant's family connections in Ukraine, nor is there reason to believe that the wording of the SOR impaired Applicant's ability to prepare her case for mitigation. *See, e.g.*, ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

Applicant cites to record evidence, *e.g.*, that her brothers are seeking to become permanent U.S. residents and that her mother splits her time between Ukraine and this country. She also points to her having surrendered her passport. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016). The Judge made findings about the evidence that Applicant mentions in her brief and included much of it into his analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has she shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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 Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board