

KEYWORD: Guideline B

DIGEST: There is a rebuttable presumption that contacts with immediate family members in a foreign country are not casual. Adverse decision affirmed.

CASENO: 13-00705.a1

DATE: 06/25/2014

DATE: June 25, 2014

In Re:	)	
	)	
-----	)	ISCR Case No. 13-00705
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Corey R. Williams, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 12, 2013, DoD 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 March 27, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Joan Caton Anthony denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings: Applicant is 41 years old. She was born and raised in the Soviet Union. Her parents were employed by the government in work supporting the defense of the Soviet Union. After finishing her schooling, Applicant gave birth to a daughter while working for the government. When the Soviet Union collapsed, Applicant decided to leave with her child and immigrate to the United States. Shortly after coming to the U.S., Applicant married the American citizen who had sponsored her efforts to immigrate. Applicant eventually earned a Ph.D. degree in the U.S. She was highly respected professionally and received numerous awards. She obtained a U.S. security clearance in 2008.

Applicant became a naturalized U.S. citizen in 2002, and acquired a U.S. passport. She vacationed in Europe and traveled to Russia to visit relatives using her U.S. passport. She had a valid Russian passport but relinquished it before becoming the employee of a U.S. defense contractor. Applicant's mother, father, and brother are residents and citizens of Russia. Her parents are retired from government-related positions and they receive Russian government pensions. Applicant's brother was employed by a government entity in Russia for 30 years. Applicant has two aunts and a niece who are citizens and residents of Russia. Applicant communicates with her parents by digital teleconference once a week.

Russia remains one of the top three most aggressive and capable collectors of sensitive U.S. economic information and technologies. Beyond collection activities and espionage directed at the United States, Russia has provided various military and missile technologies to other countries of security concern, including China, Iran, Syria, and Venezuela. Russian intelligence and security services continue to target Department of Defense interests in support of Russian security and foreign policy objectives.

The Judge reached the following conclusions: A Guideline B decision assessing the security worthiness of a U.S. citizen with Russian contacts must take into consideration Russia's aggressive efforts to collect sensitive U.S. economic and technological information. Applicant's contacts with her parents, and through them with her other family members, raise concerns that she could be targeted for exploitation, pressure, or coercion by the Russian government in ways that might threaten U.S. security interests. The record contains evidence that Applicant's family might well come to the attention of Russian authorities and become a means by which she could be subject to coercion. It is not possible to conclude that Applicant's relationships with her Russian family members would raise conflicts of interest that she would be able to resolve in favor of U.S. interests. Applicant failed to rebut the Government's allegations that her relationships and contacts with her

family members who are citizens of Russia created a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. Applicant's contacts and relationships with these individuals could force her to choose between loyalty to them and the security interests of the United States. Applicant failed to mitigate the security concerns arising under the foreign influence adjudicative guideline.

Given the Judge's findings, she properly determined that Applicant's family ties raised security concerns under Guideline B. As a result, Applicant bore the burden of persuasion as to whether she should receive a security clearance. Applicant was responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by Applicant or proven by Department Counsel, and she had the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive, ¶ E3.1.15.

Applicant asserts that evidence provided during the hearing mitigates the government's concerns under Guideline B such that a reasonable mind would accept that conclusion. She argues that although she has relatives in Russia, her life in the United States is more important to her and there is little likelihood that her relationship with her immediate family would create a risk of foreign influence or exploitation, and there is no conflict of interest because of her sense of loyalty and obligation to the U.S. Applicant states that her relationship with her parents is "casual" even though they talk once a week. She also emphasizes that she was granted a security clearance previously and that circumstances regarding her family have not changed since then. She argues that there is no reason for increased concern in her case now simply because there has been a change in circumstances with Russia. Applicant's various arguments fail to establish error.

In essence, Applicant is challenging the Judge's application of the mitigating conditions. After reviewing the Judge's decision in light of the record as a whole, the Board finds no reason to disturb the Judge's analysis. Central to that analysis was the Judge's finding that both Applicant's parents and her brother have ties to the Russian government. That fact, along with Russia's posture as an aggressive intelligence gatherer that specifically targets the U.S., led the Judge to conclude that Applicant's significant ties to the U.S. were not sufficient to mitigate the government's security concerns. Applicant's argument that her relationships with her parents is casual is not persuasive. There is a rebuttable presumption that an applicant's contacts with immediate family members in a foreign country are not casual. *See*, ISCR Case No. 04-08870 at 3 (App. Bd. Nov. 29, 2006). Nothing in this record rebuts that presumption. The Judge's conclusions on this point are sustainable.

Applicant's arguments regarding her earlier obtaining of a security clearance do not establish error on the part of the Judge. Prior decisions to grant or retain a clearance do not undermine the legal sufficiency of a Judge's subsequent adverse decision. "The government is not estopped from making an adverse clearance decision when there were prior favorable adjudications." *See* ISCR Case No. 07-17383 at 2 (App. Bd. Feb. 12, 2009). Moreover, Applicant acknowledges that circumstances within Russia may well have changed since the prior issuance of her security clearance. Changed circumstances within countries, or changed circumstances between countries

and the U.S. could certainly provide a basis for treating subsequent adjudications differently.

Applicant cites to decisions by the Hearing Office which, she contends, support her case for mitigation. The Board gives these cases due consideration as persuasive authority. However, they contain significant factual differences from Applicant's case. Nothing in the cases establishes error on the part of the Judge in this case. In any event, Hearing Office cases are binding neither on the Board nor other Hearing Office Judges. *See, e.g.*, ISCR Case No. 11-10178 at 3 (App. Bd. Aug 29, 2013).

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*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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).

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

### **Order**

The decision of the Judge 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