

KEYWORD: Guideline B; Guideline C

DIGEST: There is a nexus between admitted or proven conduct under any Guideline and an applicant's eligibility for a clearance. A clearance adjudication is not a test of the applicant's loyalty to the U.S. The loyalties addressed under Guideline B include those to family members in another country, not simply the country itself. Adverse decision affirmed.

CASE NO: 14-02428.a1

DATE: 08/25/2015

DATE: August 25, 2015

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In Re:)	
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-----)	ISCR Case No. 14-02428
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 8, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On June 12, 2015, 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 issue on appeal: whether the Judge's adverse decision 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

Applicant, a naturalized U.S. citizen, works for a Government contractor. She was born, raised, and educated in Russia. Her father, sibling, and grandparent are citizens and residents of Russia. Applicant's father used to work for a Russian publishing agency. She is estranged from him. She has a close relationship with her sibling, however, speaking with this person weekly over the phone or by emails. The grandparent is 90 years old and receives a pension from the Russian government. Applicant has contact with this person once or twice a month. Applicant has a U.S. born daughter and a U.S. born step-daughter, who is an adult. Claiming dual citizenship, she has traveled to Russia on a Russian passport. Recently, she renounced her Russian citizenship and returned her passport to the Russian embassy. Almost all of Applicant's financial and property interests are in the U.S. She considers this country her home and intends to retire here. She is involved in various community activities. She enjoys a good reputation for her work ethic and her commitment to the U.S.

Russian officials engage in electronic surveillance without proper authorization. Russia is an aggressive collector of U.S. proprietary information and advanced weapons technologies. It is one of the most capable and persistent intelligence threats against the U.S. Russia's intelligence services attempt to exploit persons with family ties to Russia, offering financial inducements to citizens to encourage them to compromise classified information.

The Judge's Analysis

The Judge resolved the Guideline C allegations in Applicant's favor. In arriving at the opposite conclusion under Guideline B, the Judge noted Applicant's close relatives who live in Russia and her frequent contact with them. He concluded that these contacts create a heightened risk of exploitation. In further concluding that Applicant had not mitigated the concerns arising from her Russian relatives, the Judge stated that Russia's espionage practices against the U.S. militate against Applicant's case for mitigation.

Discussion

Applicant argues that the record does not support a conclusion that she could be placed in a conflict of interest or "in a compromising circumstance."¹ Appeal Brief at 8. The Directive presumes that there is a nexus between admitted or proven conduct or circumstances under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015). In this case, (1) Applicant's having close relatives in a country that practices espionage against the U.S.; (2) her frequent

¹Applicant's brief notes that, under Guideline B, that "[F]oreign contacts . . . may be a security concern if the individual has divided loyalties[.]" Directive, Enclosure 2 ¶ 6. She argues that she has renounced her formal ties to Russia and centers her life in the U.S. To the extent that she construes the Judge's decision as implying that she is disloyal to the U.S. or that she is loyal to Russia, we find nothing in it that would lead to that conclusion. Indeed, Directive, Enclosure 1, SECTION 7 explicitly provides that an adverse clearance decision is "in no sense . . . a determination as to the loyalty of the applicant concerned." The loyalties referenced in Directive, Enclosure 2 ¶ 6 include those to family members in another country, not simply the country itself.

contact with two of them; (3) Russia's status as an aggressive collector of U.S. proprietary data; and (4) Russia's practice of electronic surveillance support the Judge's conclusion that Applicant's circumstances present a heightened risk of coercion. Applicant's appeal argument is not enough to rebut the presumption of nexus. Applicant argues that her relationship with her relatives is sufficiently casual that they do not pose a risk. However, given the frequency of her communications with her sibling and grandparent, and the Russian government's practice of electronic surveillance, a reasonable person could conclude that these persons are a means through which Applicant could come to the attention of Russian intelligence operatives. Applicant's argument on appeal is not enough to rebut the presumption that Applicant's contacts are not casual. *See, e.g.*, ISCR Case No. 14-02950 at 4 (App. Bd. May 14, 2015).

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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board