

KEYWORD: Guideline B

DIGEST: Applicant's daughter-in-law is also a citizen and resident of Russia. Her father is a retired official of the former Soviet Union who, participated in a Soviet intelligence organization and worked to undermine U.S. security interests. A Judge is presumed to have considered all the evidence in the record. Adverse decision affirmed.

CASENO: 08-04990.a1

DATE: 03/18/2010

DATE: March 18, 2010

In Re:)
)
)
 -----) ISCR Case No. 08-04990
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Tovah Minster, Esq., Department Counsel

FOR APPLICANT

John D. Altenburg, Jr., Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 8, 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 November 9, 2009, after the hearing, 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 failed to consider significant record evidence favorable to Applicant; whether the Judge’s application of the pertinent mitigating conditions was erroneous; and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a military retiree seeking a security clearance as an employee of a Government contractor. While in the military he performed security and criminal investigations.

Applicant’s son is married to a citizen of Russia. They met in a U.S. graduate school. The two were married in a civil ceremony in the U.S. and in a religious ceremony in Russia. A naturalized U.S. citizen, Applicant’s daughter-in-law is also a citizen and resident of Russia. Her father is a retired official of the former Soviet Union who, during his government career, participated in a Soviet intelligence organization and worked to undermine U.S. security interests.

Applicant visited Russia to attend the wedding ceremony, and he stayed in an apartment and in a vacation home of his son’s father-in-law. He subsequently paid two other visits to Russia, in the late 2000s. In making these visits, Applicant complied with U.S. Government reporting requirements. Prominent individuals in the Defense community recommend Applicant for a security clearance.

Although the U.S. and Russia share strategic interests, the relationship between the two countries has been strained by Russian involvement in Georgia, threats against Poland, killings of Russian journalists, and the country’s use of oil as a means of political pressure against Ukraine, Lithuania, and the Czech Republic. Russia has targeted U.S. technologies and has sought protected information through industrial espionage. It has provided missile technology to China, Iran, Syria, and Venezuela, which can be used in constructing weapons of mass destruction. The Russian Ministry of Internal Affairs and Federal Security Office monitor internet and e-mail traffic. Russian law enforcement agencies have access to personal information of telephone users.

Applicant contends that the Judge did not consider record evidence which he believes to be favorable to his case for mitigation. For example, he argues that the father-in-law’s notoriety militates against his serving as a means through which Applicant might be pressured to compromise U.S. security interests. A Judge is presumed to have considered all the evidence in the record. *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). Applicant’s presentation on appeal is not sufficient to rebut that presumption.

The decision reflects that the Judge considered the entire record and that she provided a reasonable interpretation of the evidence. Applicant points to his prior good security record as a factor that mitigates the security concerns in his case. Applicant's security record is evidence that the Judge was obliged to consider. The Judge refers to that record several times in the Decision. This is a close case, and as such the Judge was obliged to resolve it in favor of national security rather than in favor of Applicant. *See, e.g.*, ISCR Case No. 05-12088 at 4 (App. Bd. Oct. 24, 2007). The Government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. *See, e.g.*, ISCR Case No. 08-00435 at 3 (App. Bd. Jan. 22, 2009), citing *Adams v. Laird*, 420 F. 2d 230, 238-239 (D. C. Cir. 1969), *cert. denied* 397 U.S. 1039 (1970).

We have examined the Judge's decision, both as to her application of the mitigating conditions and the whole-person factors. In light of Applicant's son's presence in Russia and his family circumstances there, we conclude that the Judge 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).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, 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