



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 08-04990  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel

For Applicant: John D. Altenburg, Jr., Esquire

November 9, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to mitigate the Government’s security concerns under the Foreign Influence adjudicative guideline. His eligibility for a security clearance is denied.

On August 16, 2006, Applicant signed and certified a security clearance application (SF-86). On December 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On January 14, 2009, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on June 29, 2009. I convened a hearing on August 26, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced five exhibits (Ex. 1, 2, 3, 4, and 5), and offered facts found in nine official U.S. Government documents for administrative notice. (Hearing Exhibit (HE) I.) The Government's exhibits were admitted without objection. I took administrative notice of HE I. Applicant testified on this own behalf and called two witnesses. At the hearing, he introduced three exhibits, which were identified as Ex. A, B, and C and admitted without objection. DOHA received the transcript (Tr.) of the hearing on September 3, 2009.

### **Findings of Fact**

The SOR contains four allegations of disqualifying conduct under AG B, Foreign Influence (SOR ¶¶ 1.a. through 1.d.). In his Answer to the SOR, Applicant admitted all four allegations and provided additional information. Applicant's admissions are admitted herein as findings of fact.

After a thorough review of the record in the case, including witness testimony, exhibits, relevant policies, and the applicable adjudicative guideline, I make the following findings of fact:

Applicant is 61 years old and a native-born U.S. citizen. He is married and the father of an adult son who is 32 years old. Applicant seeks a security clearance as a civilian government contractor. In 2003, he retired after 30 years of military service with a distinguished record in security and criminal investigations that included numerous high-level commendations, awards, and certificates of appreciation. In 2005, he was diagnosed with Parkinson's disease. (Ex. 1; Ex. A; Tr. 43-91, 112.)

Applicant was first granted a security clearance in 1970. He held a security clearance without incident until 2002. In 2002, his eligibility for access to a higher level clearance was revoked because of security concerns related to his son's wife's nationality and family connections and the country where his son now resides. Applicant retired from military service in 2003. (Ex. 1 at 9; Ex. 5; Tr. 33-38, 137-138.)

In 1999, Applicant learned that his son was romantically involved with a Russian woman. The son and the woman met as graduate students at a U.S. university. They were married in a civil ceremony in the United States in October 1999. Applicant and his wife strongly disapproved of the marriage, and they did not attend the civil ceremony. They felt that their son had deceived them about his relationship with the Russian woman. (Ex. A: son's statement; Tr. 115-117.)

Applicant's daughter-in-law is a citizen and resident of Russia. She is also a naturalized U.S. citizen. The daughter-in-law's father is a retired high-level officer in a Russian military intelligence organization, who worked to undermine U.S. security

interests by “managing” or “handling” individuals who divulged U.S. classified information to the Russians. (Ex. A: daughter-in-law’s statement; Tr. 119-121, 126.)

Applicant’s son and his wife have two young children, one born in the United States in 2000, and the other born in Russia in 2006. Both children are dual citizens of the United States and Russia. Applicant’s son and daughter-in-law reside in Russia with their two children. The older grandson attends a Russian elementary school. Applicant’s son and his family live in the same neighborhood as Applicant’s daughter-in-law’s father and mother. Applicant’s son resides in Russia under a visa granted to him by the Russian Government. (Ex. A: son’s statement; Ex. A: daughter-in-law’s statement; Ex. B at 7; Tr. 139-140, 152-159.)

In the summer of 2000, Applicant’s son and daughter-in-law traveled to Russia to marry in a religious ceremony, to visit her family, and to introduce them to their newborn son. Applicant, who was serving in the U.S. military, traveled to Russia on personal leave to witness the religious ceremony uniting his son and his daughter-in-law in marriage. Applicant’s wife, who is estranged from their son, did not join him in the Russian trip, and she did not attend the wedding. Applicant informed his chain of command of the trip and complied with all U.S. government foreign travel reporting requirements. (Ex. A: son’s statement; Ex. A: daughter-in-law’s statement; Tr. 115-117, 151.)

While in Russia in 2000, Applicant elected not to stay in a hotel, but instead stayed in the apartment and vacation home of his daughter-in-law’s father, who had retired from his government position in 1991.<sup>1</sup> In his retirement, the daughter-in-law’s father owns a security business in Russia. While Applicant was a guest of his daughter-in-law’s parents, their vacation home burned. Arson was not the cause of the fire. Although they had originally planned to return to the United States after the religious ceremony, Applicant’s son and daughter-in-law decided to remain in Russia to provide moral support to her parents. Applicant’s son obtained a job with a U.S. government entity in Russia.<sup>2</sup> (Ex. A: daughter-in-law’s statement; Tr.117-119, 121, 147-148.)

Applicant’s son, daughter-in-law, and older grandson came to the United States in the summer of 2006 so that the daughter-in-law could take part in a naturalization hearing as a part of her application for U.S. citizenship.<sup>3</sup> Applicant saw his son and his

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<sup>1</sup> Applicant reported that during this time, he was also a dinner guest at the vacation home of a friend of his daughter-in-law’s parents. The family friend had also served in high-level security and diplomatic positions for the former Soviet government. (Ex. 5 at 6.)

<sup>2</sup> Later, when the identity of the son’s father-in-law became clear, he was terminated from this job. He now works for a private European company in Russia. (Tr. 128-132.)

<sup>3</sup> Applicant’s son’s wife received U.S. citizenship under a program for spouses of U.S. government employees working outside the United States. (Ex. A at 21.)

family at that time, but his wife did not. Applicant's son and his family have not been in the United States since that visit. (Ex. B at 1; Tr. 154-159.)

Applicant also traveled alone to Russia in 2007 and 2008 to visit his son and his family. Applicant's son, his wife, and their children reside at certain times with her parents in the parents' vacation house. During his 2007 visit, Applicant stayed in his son's apartment and was a guest for several days at his daughter-in-law's father's vacation house. When he returned to the United States, Applicant reported his activities and complied with all U.S. government reporting requirements. Applicant's wife, who remains estranged from their son, did not accompany Applicant on these trips. (Ex. B at 7; Tr. 112-113, 158.)

Applicant sees himself as the significant familial link with his son. When his son was newly married and still in graduate school, he needed money. Applicant did not want his son to turn to his Russian father-in-law for financial support, so he took approximately \$17,000 from his 401(k) plan and gave it to his son. (Tr. 107-108, 151-158.)

Applicant speaks with his son by telephone about twice a month. He does not speak with his grandchildren because they do not speak English well. Their first language is Russian. (Tr. 113.)

Applicant does not send money to his son in Russia. Applicant owns no property in Russia, and he has no accounts with Russian banks. He describes his relationship with his son's father-in-law as that of "[t]wo proud grandfathers." (Ex. B at 8; Tr. 113-114.)

Two retired generals who had worked closely with Applicant when he was a military investigator testified credibly on his behalf. They praised his skill, leadership ability, managerial expertise, and unblemished patriotism. They recommended that he be granted a security clearance, as did a third general who provided a letter of character reference for Applicant. (Ex. A; Tr. 46-84.)

At the time of his hearing, Applicant was not employed. He was dismissed by his previous employer after he fell in the workplace and his employer concluded that his Parkinson's disease was making it difficult for him to carry out his job safely. However, the government contractor that sponsored his application for a security clearance continued to sponsor his application. (Tr. 135-137.)

I take administrative notice of the following facts about Russia, which appear in official U.S. government publications:

The United States and Russia share certain common strategic interests. Of mutual interest to the United States and Russia are counterterrorism and the reduction of strategic arsenals. Russia and the United States share a common interest in controlling the proliferation of weapons of mass destruction and the means to deliver

them. The Cooperative Threat Reduction (CRT) program was launched in 1992 to provide for the dismantlement of weapons of mass destruction in the former Soviet Union. The CRT program was renewed in 2006 for seven years, until 2013. (HE I: Background Note: Russia, Bureau of European and Eurasian Affairs, U.S. Department of State, April 2009, at 13.)

Since 2003, U.S.-Russian relations have often been strained. Tensions between the United States and Russia increased in August 2008 when Russia sent its army across an internationally recognized boundary in an attempt to change by force the borders of Georgia, a country with a democratically-elected government. Russia's assault on Georgia followed other troubling signs: threats against Poland, including the threat of nuclear attack; suspicious poisonings and killings of journalists and those deemed "undesirable," including the President of Ukraine; the apparent use of energy to apply political pressure against Ukraine, Lithuania, and the Czech Republic; and the creation in Russia's state-controlled media of an "enemy image" of the United States. (HE I: Summary at 2.)

Since at least 1997, Russia has targeted U.S. technologies and has sought to obtain protected information from them through industrial espionage. Russian espionage specializes in military technology and gas and oil industry expertise. (HE I: Summary at 3.)

In addition to its technology collection and espionage activities against the United States, Russia supports missile programs and nuclear and biotechnology projects in other countries. Russia has provided missile technology to China, Iran, Syria, and Venezuela. These technologies can be used in the construction of weapons of mass destruction. Despite U.S. concerns, Russia has refused to cease constructing nuclear reactors in Iran. (HE I: Summary at 3.)

Russia's internal problems include terrorism and a poor human rights record. The U.S. Department of State has warned U.S. citizens of safety concerns related to travel in Russia. (HE I: Summary at 4.)

The U.S. Department of State reports allegations that Russian government officials and others conduct warrantless searches of residences and other premises and electronic surveillance without judicial permission. This surveillance includes Ministry of Internal Affairs and Federal Security Office monitoring of internet and e-mail traffic. Additionally, Russian law enforcement agencies have legal access to the personal information of users of telephone and cell phone services. (HE I: Summary at 5.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the

authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion in obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

Under Guideline B, Foreign Influence, “[f]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.” AG ¶ 6.

Additionally, adjudications under Guideline B “can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

A Guideline B decision concerning Russia must take into consideration the geopolitical situation in Russia, as well as the dangers existing in Russia. Russia is a diplomatic and strategic partner of the United States in some areas where both countries have mutual interests. For example, Russia is a key partner in efforts to reduce proliferation of weapons of mass destruction and control of nuclear materials. However, Russia is also one of the world’s most aggressive nations in the collection of U.S. intelligence and sensitive economic information.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The facts of Applicant’s case raise security concerns under disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(i).<sup>4</sup>

The United States is a primary intelligence target of Russia. American citizens with immediate family members who are citizens or residents of Russia could be vulnerable to coercion, exploitation, or pressure.

Applicant’s only child is married to a Russian citizen and has resided in Russia with her for the past nine years. The couple has two young children who also reside in Russia and are dual citizens of Russia and the United States. In order to reside and

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<sup>4</sup> AG ¶ 7(a) reads: “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” AG ¶ 7(b) reads: “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.” AG ¶ 17(i) reads: “conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.”

work in Russia, Applicant's son relies on a visa granted him by the Russian government.

Applicant's son's father-in-law and mother-in-law are citizens and residents of Russia. They live near Applicant's son's family in Russia. Applicant's son sees his father-in-law and mother-in-law frequently. The father-in-law is retired and owns a security company in Russia. During his career before retirement, he carried out high-level intelligence work against the United States for the Russian government. Applicant's son shares his home with his wife, who has close familial relationships with her father and mother.

In 2000, 2007, and 2008, Applicant traveled to visit his son and his family in Russia. During at least two of these visits, Applicant elected to stay in his son's father-in-law's home and had friendly familial contacts with him. These facts raise security concerns under AG ¶¶ 7(a), 7(b), and 7(i).

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.," then AG ¶ 8(a) might apply. If "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest," then AG ¶ 8(b) might apply. If "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," then AG ¶ 8(c) might apply. If "the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority," then AG ¶ 8(d) might apply. If the "individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country," then AG ¶ 8(e) might apply.

In 1999, Applicant, who had devoted his career in the U.S. military to intelligence and investigations, learned that his only child was involved in a romantic relationship with and planned to marry the daughter of a retired high-level Russian intelligence officer who had worked to undermine U.S. security interests. Applicant and his wife were deeply opposed to their son's marriage to the Russian woman. As an expression of their opposition and lack of support, they did not attend the couple's civil marriage ceremony, which was held in the United States.

In July 2000, Applicant's son, his Russian wife, and their infant son traveled to Russia to visit the wife's parents and to take part in a religious ceremony celebrating their marriage. Applicant and his wife were invited to attend the ceremony in Russia. Applicant's wife, who was and continues to be estranged from the son, did not attend.



Applicant took personal leave from his active duty military responsibilities and traveled alone to Russia to meet his son's parents-in-law and to attend the couple's religious marriage ceremony. While in Russia, he elected not to reside in a hotel but to accept the bride's family's invitation to reside with them in their apartment and in their vacation home. Additionally, he joined the family in dining with a former Russian intelligence and diplomatic agent who was their friend. He complied with all security requirements for reporting his trip and foreign contacts.

Applicant sees himself as the only familial link with his son and grandchildren. He is a loving, loyal, and devoted father and grandfather. He speaks with his son by telephone about twice a month. He is unable to speak with his grandchildren because their first language is Russian and they know little English. In 2007 and 2008, while employed as a government contractor, he took personal leave and traveled alone to Russia to visit his son and his family. In 2007, he again resided in his son's father-in-law's vacation home with his son, the son's wife, his grandchildren, and his son's parents-in-law. Despite the father-in-law's past history of taking actions that seriously threatened U.S. security, Applicant described his relationship with his son's father-in-law as that of "two proud grandfathers." Applicant complied with all security requirements for reporting his trip and foreign contacts.

Applicant's contacts with his son are not casual or infrequent. To the contrary, they are frequent, intense, and familial. His relationship with his son's Russian father-in-law is intense, risk-laden, and familial; it is framed by an awareness that the father-in-law carried out espionage against the United States, and Applicant knows that he and the Russian hold opposing views on the nature and role of government. At the same time, they are grandfathers to the same children. This relationship raises a concern that Applicant could be targeted for exploitation, pressure, or coercion by the government of Russia in ways that might also threaten U.S. security interests. Moreover, even though Applicant has been described by credible witnesses as a man who has demonstrated over a long period of time unquestionable loyalty and patriotism, the facts of this case raise conflict of interest concerns that go to the heart of family loyalties and the parent-child relationship so compellingly that it is not possible to conclude that Applicant can be expected to resolve such conflicts in favor of the U.S. interest.

Applicant was forthright, prompt, and candid in complying with existing agency security requirements for reporting his Russian contacts when he traveled to visit his son and his family in Russia. I conclude that AG ¶ 8 (e) applies to the facts of his case.

However, Applicant failed to rebut the Government's allegations that his contacts with his son, a resident of Russia, his daughter-in-law, a citizen and resident of Russia, and his son's father-in-law, a resident and citizen of Russia and a former high-level Russian intelligence agent, created a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant's contacts and relationships with these individuals could force him to choose between loyalty to his son and grandchildren and the security interests of the United States. (ISCR Case No. 03-15485 at 4-6 (App. Bd. June 2, 2005); ISCR Case No. 06-24575 (App. Bd. Nov. 9, 2007)) I

conclude that the mitigating conditions identified under AG ¶¶ 8(a), 8(b), 8(c), and 8(d) do not apply to the facts of Applicant's case.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of the whole person concept and all the facts and circumstances surrounding this case. Applicant is a native-born U.S. citizen and a mature adult of 61 years of age. He had an exemplary military career and served his country with great distinction. After he retired, he was stricken with a debilitating illness. Even so, he continued in his efforts to use his experience, skills, and knowledge to serve his country, and he sought a security clearance as a government contractor.

Applicant is also a parent, and he is devoted to his only child, a son who is now 32 years old, married, living in Russia, and the father of two small children. In 1999, the son became romantically involved with a Russian citizen whose father, also a Russian citizen, had carried out certain intelligence actions that undermined U.S. security interests. Applicant and his wife vigorously opposed the match, but the son married the woman and moved to Russia to live with her and their children in the orbit of the wife's father. It was a choice that appeared to stand in direct opposition to Applicant's 30 years of honorable and patriotic service in the U.S. military.

Throughout history, a father's conduct and choices have sometimes adversely affected the lives of his children. This case reverses the historical pattern. Whether intended or not, the choices made by Applicant's son have not only limited his father's career but they have also increased his vulnerability and his father's vulnerability to pressure or coercion by an aggressive foreign government that targets U.S. security interests. Applicant's actions to maintain close contact with his son, to travel to Russia to visit him, to reside with him in Russia, and to accept the possibly compromising hospitality of his son's father-in-law raise serious unmitigated security concerns about his vulnerability to coercion, even as they also bear poignant witness to his parental devotion and attentiveness.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under AG B.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge