

KEYWORD: Guideline B; Guideline F

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. In Guideline B cases, the nature of the foreign country and its intelligence gathering history provide a context for evaluating record evidence. There is a rebuttable presumption that an applicant has ties of affection for his immediate in-laws. Adverse decision affirmed.

CASE NO: 11-01470

DATE: 03/05/2012

DATE: March 5, 2012

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 23, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 29, 2011 after the hearing, Administrative Judge Francisco Mendez 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 he was denied due process; whether

the Judge failed to consider all of the evidence; and whether the Judge failed properly to apply the mitigating conditions. The Judge's favorable findings under Guideline F are not at issue on this appeal. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant served in the Navy from 1980 to 1988, holding a security clearance the entire time without incident. He enjoys an excellent reputation for his character, integrity, work ethic, and patriotism. Applicant's wife was born in Russia and lived most of her life there. Applicant met her through an on-line dating service. Applicant visited her in Russia both before and after their marriage, reporting his trips to his employer.

Applicant's wife returned to Russia after their marriage because she had a good job and her income was needed to address the couple's financial problems. She assisted Applicant in paying off his past-due debts. The couple have a daughter born in Russia. Applicant's wife and daughter immigrated to the U.S. fairly recently, and the wife is a permanent resident of this country. The daughter holds dual citizenship. The wife is transferring hundreds of thousands of dollars to the U.S. The money is currently in a Russian bank account.

Applicant's mother and father-in-law live in Russia. They are both retired, and receive pensions from the Russian government. The parents' circumstances are such that a reasonable person could foresee that they, and consequently Applicant's wife, might come to the attention of the Russian government. She speaks to her parents weekly, and she maintains regular contact with two close friends who are residents and citizens of Russia.

Russia and the U.S. engage in a policy of mutual cooperation in areas of shared interest. However, Russia has a poor human rights record, its government infringes on the rights of its citizens, and it targets the U.S. for intelligence gathering.

In the Analysis, the Judge cited to evidence of Applicant's commitments to the U.S., his service in the Navy while holding a security clearance, and his compliance with his employer's security procedures. However, he also noted Applicant's strong ties to Russia through his Russian wife, who has only recently moved to the U.S. Her parents and close friends live in Russia, she maintains regular contact with them, and her life savings are in a Russian bank. The Judge concluded that Applicant's parents circumstances suggest that they are vulnerable to "the whims of the Russian government." Decision at 11.

Applicant states that, given the short amount of time he had to prepare, and the large amount of evidence upon which the Government intended to rely, he was unable adequately to represent himself or to hire a lawyer who could do so. One month prior to the hearing, the Judge had sent Applicant e-mails which advised him of the likely date of the hearing and contained prehearing guidance. The Judge also had advised Applicant that, if he had hired an attorney, the attorney should be in touch with DOHA. The Prehearing Guidance advised Applicant of his rights, including his right to be represented by counsel, his right to present evidence and witnesses, and the procedure to follow if he needed to request a continuance. At the hearing, the Judge advised Applicant of the procedures to be followed and specifically asked if Applicant was able to proceed. Applicant stated in the affirmative. Tr. at 8. Applicant offered several pieces of documentary evidence, all of which

the Judge admitted, and he called a witness in his behalf as well as testifying himself. The record discloses no reason to believe that Applicant was denied the due process rights afforded by the Directive. *See, e.g.*, ISCR Case No. 08-04464 at 2 (App. Bd. May 8, 2009).

Applicant cites to his evidence of good character and other favorable evidence, contending that the Judge either did not consider it or that he failed properly to weigh the evidence. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-10068 at 2 (App. Bd. Dec. 20, 2011). In this case, the Judge discussed Applicant's favorable evidence. However, his explanation for concluding that Applicant had not met his burden of persuasion is supported by the record that was before him. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law.

Applicant argues that, contrary to the Judge's conclusion, the evidence establishes the criteria of Foreign Preference Mitigating Condition 8(b).<sup>1</sup> He cites to his testimony about his patriotism and to his service in the Navy, his military decorations and awards, and favorable statements in the Decision in support of his argument that his ties to the U.S. are deep and longstanding.

The Judge was bound to consider the evidence which Applicant has cited, in addition to all other record evidence. However, in Guideline B cases the nature of the foreign government involved and its intelligence gathering history provide a context for evaluating the record evidence. In-laws represent a class of persons whom the Directive contemplates as presenting a potential security risk. There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, the immediate family members of his or her spouse. *See, e.g.*, ISCR Case No. 09-06831 at 3-4 (App. Bd. Mar. 8, 2011). In light of record evidence of Applicant's ties in Russia, he is vulnerable to foreign influence through his Russian wife, his parents-in-law's circumstances, his wife's frequent contact with her parents and friends in Russia, and the nature of the Russian government along with its intelligence gathering history. The Judge's analysis of Mitigating Condition 8(b) is sustainable.

Reviewing the Judge's Decision in the context of the entire record, we conclude that the Judge has 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 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). *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."

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<sup>1</sup>Directive, Enclosure 2 ¶ 8(b): "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[.]"

**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: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board