KEYWORD: Guideline B

DIGEST: Department Counsel persuasively argues that the Judge erred in concluding that, with the exception of Applicant's sibling who works for the Egyptian government, none of his other relatives have ties to that country's government. Department Counsel correctly points out that Applicant's mother and one of his sibling-in-law are retired government employees and his other sibling-in-law still works for the government. Department Counsel further contends that the Judge mischaracterized the nature of the employment of Applicant's sibling with the Egyptian government. Favorable decision reversed.

CASENO: 17-01979.a1

DATE: 07/31/2019

DATE: July 31, 2019

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Brittany White, Esq., Department Counsel

FOR APPLICANT
John V. Berry, Esq.
Melissa L. Watkins, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 30, 2017, 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 May 1, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip J. Katauskas granted Applicant's request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge erred in his findings of fact and whether the Judge's mitigation analysis was arbitrary, capricious, or contrary to law. Consistent with the following, we reverse.

The Judge's Findings of Fact

Applicant is in his late-40s and is married with two children. He was born in Egypt and earned a bachelor's degree there. He entered the United States in the late 2000s, became a U.S. citizen in 2015, and later earned a master's degree from a U.S. university. He has worked on Federal Government projects, including **[Redacted]**.

The SOR alleged that Applicant has foreign family members and foreign financial interests. Those family members include his mother, siblings, mother-in-law, and siblings-in-law who are citizens and residents of Egypt. His mother and one sibling-in-law served as professionals in an Egyptian government ministry and are now retired. Another sibling-in-law continues to serve as a professional in that same government ministry. One of his siblings is a teacher in a private school; another is a **[Redacted]** for the Egyptian government. His financial interests in Egypt include ownership of interests in three properties, bank accounts, and bank certificates. His spouse also maintains some bank accounts in Egypt. Applicant admitted the SOR allegations with explanations. Applicant speaks to his mother about once a week and visits her about once a year. He speaks to his siblings about every two to four weeks and sees them when he visits his mother. His siblings knew that at some point he was working on one Federal project. He speaks to his in-laws periodically
.

The SOR alleged that Applicant's Egyptian assets totaled about $354,000. He sold one of the properties shortly before the hearing. Applicant estimated that another property was worth about half of the SOR-listed amount of $125,000. He wants to keep this property so that he could use it during visits. Applicant's equity in another property is about $3,500. He closed his two bank accounts in Egypt. Due to depreciation of the Egyptian currency, his foreign bank certificates and savings bonds are about $6,000, instead of the alleged amount of $16,000. His children have bank certificates in Egypt worth about $8,000. His spouse's Egyptian bank holdings, which were alleged to total about $64,000, now are about $25,000. Due to either liquidation or depreciation, the value of his Egyptian assets now range from about $149,000 to $163,500. Applicant and his spouse both have six-figure salaries. He estimates his U.S. assets total about $1.7 million. He provided references that vouch for his exemplary character.

Since 1979, Egypt and the United States have maintained strong economic and security ties. The U.S. State Department has warned U.S. citizens of the risks of terrorism in Egypt. Several terrorist groups, including ISIS, have committed deadly attacks there, including the targeting of government officials. Such attacks are likely to continue. Egypt has a record of human rights abuses.

The Judge's Analysis

Applicant's family members and financial interests in Egypt created a heightened risk of foreign exploitation. His assets in Egypt, however, have substantially decreased since the SOR was issued. His current Egyptian assets, totaling about $163,000, are less than 1% of his U.S. assets.[1] The value of his foreign assets are unlikely to result in a conflict and could not be used effectively to influence or pressure him.

Applicant's mother is elderly and does not know that he works on U.S. Government projects. His contacts with his siblings are less frequent. With the exception of his one sibling, "none of these relatives have any ties to the government or military." Decision at 10. "Nor do any of these relatives (including the [sibling] working for the [government]) know that Applicant is seeking a security clearance or the details of what his job entails. Applicant has been very assiduous in not providing any details about his work to his Egyptian relatives. I do not find the frequency of Applicant's contacts with his Egyptian family members sufficient to raise security concerns." *Id.*

Applicant arrived in the United States in the late-2000s and became a U.S. citizen in 2015. He is in the process of selling his current home and buying another valued at $950,000. He testified credibly that, if he learned that one of his family members was being exploited, he would report it to appropriate authorities. He has established himself as a solid U.S. citizen. He has deep loyalty to the United States and would resolve any conflict in favor of the United States.

Discussion

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991). The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate admitted or proven facts. The applicant has the burden of persuasion as to obtaining a favorable decision. Directive ¶ E3.1.15. The standard applicable in security clearance decisions "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Encl. 2, App. A ¶ 2(b).

[1] We note that, based on the Judge's findings, the current calculation is over 9%.

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.,* ISCR Case No. 16-02322 at 3 (App. Bd. Mar. 14, 2018).

Department Counsel challenges the Judge's mitigation analysis. At the outset, it merits noting the Judge reached inconsistent conclusions regarding whether security concerns were created due to Applicant's contacts with his foreign family members. In his analysis, the Judge initially stated:

> Applicant has connections to his mother, his [siblings], and his in-laws, who are all citizens and residents of Egypt. There is an articulated heightened risk associated with having ties to family members in Egypt, due to the activities of terrorist organizations and insurgents operating within its borders. In addition, Applicant had over $350,000 in Egypt, between real estate and bank accounts, when the SOR was issued. The evidence is sufficient to raise the . . . disqualifying conditions [in Directive, Encl. 2, App. A ¶¶ 7(a), 7(b), 7(e), and 7(f).] [Decision at 9.]

The Judge later contradicts a portion of that conclusion by stating, "I do not find the frequency of Applicant's contacts with his Egyptian family members sufficient to raise security concerns." Decision at 10. It is error for the Judge to conclude, on the one hand, that specific SOR allegations (*i.e.,* Applicant's contacts with his foreign relatives) create security concerns (*i.e.* disqualifying conditions apply to those circumstances) and, on the other hand, conclude those allegations or foreign contacts do not raise security concerns. *See* ISCR Case No. 14-02149 at 6-7 (App. Bd. Mar. 5, 2019) for a discussion of a similar contradiction in a Judge's Guideline B analysis. If the Judge meant to say the frequency of Applicant's contact with his foreign relatives mitigates the pertinent security concerns, then we do not agree with that conclusion. The Judge found that Applicant maintains weekly contact with his mother and monthly contact with his siblings. Those contacts are not so casual or infrequent to mitigate the resulting security concerns. Furthermore, infrequency of contact is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to, his or her own immediate family as well as his or her spouse's immediate family. *Compare*, ISCR Case No. 17-03450 at 3 (App. Bd. Feb. 28, 2019).

Department Counsel persuasively argues that the Judge erred in concluding that, with the exception of Applicant's sibling who works for the Egyptian government, none of his other relatives have ties to that country's government. Department Counsel correctly points out that Applicant's mother and one of his sibling-in-law are retired government employees and his other sibling-in-law still works for the government. Department Counsel further contends that the Judge mischaracterized the nature of the employment of Applicant's sibling with the Egyptian government. Appeal Brief at 3. In his security clearance application, Applicant stated this sibling was a **[Redacted]**. Government Exhibit (GE) 1 at 40. In responding to the SOR, he also admitted without

qualification that this sibling was a **[Redacted]**. In the findings of fact, the Judge stated, "Applicant's [sibling in question] has an administrative position with the Egyptian **[Redacted]**. It is not a political appointment but is a civil service position." [Decision at 4.] This finding is apparently based on Applicant's testimony that this sibling "does some administrative work . . . I don't know exactly the details of what [the sibling] does, but I know [the sibling] is in the **[Redacted]**." Tr. at 26 and 64-65. Department Counsel argues this apparent contradiction in the sibling's employment responsibilities has a significant impact in terms of assessing the security risk that this sibling presents. We note (and the Judge found) that Applicant admitted the SOR allegation asserting the sibling in question is a **[Redacted]**, which is sufficient to establish by substantial evidence the sibling holds that status. *See, e.g.,* ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018).

Department Counsel argues that "the biggest and more relevant concern arises from Applicant's [sibling's] employment as a **[Redacted]** with the Egyptian [government]." Appeal Brief at 15. We agree. Applicant's employment involves **[Redacted]** for the United States. The nature of Applicant's and his sibling's employment creates a potential conflict of interest that, on its face, is significant. In this regard, it also merits noting that the Judge made apparent inconsistent statements regarding the extent of the knowledge this sibling has about Applicant's employment. At one point, the Judge indicated that Applicant's siblings "knew at some point Applicant was working on **[Redacted]**." Decision at 4. Later, the Judge contradicted that statement by saying, "Nor do any of these relatives (including the [sibling] working for the [Egyptian government]) know . . . the details about what [Applicant's] job entails." Decision at 10. The Judge's decision does not directly or adequately analyze the apparent conflict of interest arising from the nature of Applicant's and his sibling's employment.

The status of Applicant's sibling as a **[Redacted]** of the Egyptian government also gives rise to security concerns. In the past, we have recognized that an applicant's ties, either directly or through a family member, to persons of high rank in a foreign government or military are of particular concern, insofar as it is foreseeable that through an association with such persons the applicant could come to the attention of those interested in acquiring U.S. protected information. *See, e.g.*, ISCR Case No. 08-10025 at 2 and 4 (App. Bd. Nov. 3, 2009) (Applicant's brother was a high-level foreign government official); ISCR Case No.11-04980 at 2 and 6 (App. Bd. Sep. 21, 2012) (Applicant's sister-in-law was married to a retired high-ranking official in a foreign army); and ISCR Case No. 11-12632 at 2 and 5 (App. Bd. Feb. 2, 2015) (Applicant's niece was an employee of a high-ranking foreign government official). Given the facts in this case, it is foreseeable that the high-level governmental position of Applicant's sibling could become a means through which parties could attempt to exert pressure on him. The Judge's decision fails to analyze the security significance arising from the sibling's high-level governmental position.

Applicant became a U.S. citizen about three years before the hearing. He has not filed paperwork to renounce his Egyptian citizenship. Tr. at 53-54; GE 1. His wife, and his children are dual citizens, each retaining their Egyptian citizenship. Tr. at 56 and 58-59; GE 1 and 2. Applicant's ties to Egypt are significant. The record evidence is not sufficient to demonstrate that, given the

specific security concerns present in this case, that Applicant's relationships and loyalties in the U.S. would necessarily outweigh his sense of loyalty or obligation to his relatives in Egypt. Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member. As stated above, any doubt concerning security clearance eligibility must be resolved in favor of the national security.

Based on our review of the record, we conclude that the Judge's decision is arbitrary and capricious because it fails to articulate a rational connection between the facts found and the choice made, fails to consider important aspects of the case, and runs contrary to the weight of the record evidence. Furthermore, we conclude that the record evidence, viewed as a whole, is not sufficient to mitigate the Government's security concerns under the *Egan* standard. The decision is not sustainable.

Order

The Decision is **REVERSED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board