

KEYWORD: Guideline B; Guideline J; Guideline E

DIGEST: We have considered Applicant’s arguments in light of the evidence, Applicant’s SOR admissions, and the official notice documents regarding Morocco that the Judge included in the record. We conclude that the Judge’s material findings of security concern are based upon “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Adverse decision is affirmed.

CASE NO: 18-02041.a1

DATE: 05/13/2020

DATE: May 13, 2020

In Re: ----- Applicant for Security Clearance))))))))	ISCR Case No. 18-02041
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 17, 2018, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 14, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Candace Le'i Garcia 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 Guidelines J and E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant made the following findings pertinent to the issues raised in appeal: Applicant was born in Morocco and immigrated to the U.S. in the mid-2000s. He is single and has no dependents. He has never previously held a clearance. All of his family members live in Morocco—his mother and six siblings are citizens and residents of that country. He stated in his security clearance application that he regularly communicates with his siblings. At the hearing, he testified that his only contact is with his mother and one sibling; however, he speaks with these two relatives daily, primarily through a group chat. He has traveled to Morocco several times, most recently in 2019. Applicant gave his mother money when he visited her and has done so regarding other family members as well. He stated that no family member in Morocco relies on him for financial support.

Applicant also has several cousins who are citizens and residents of Morocco, one of whom is retired from the Moroccan military. He last contacted this cousin in 2016. He has two other cousins who serve in the Moroccan military, and he has a childhood friend who is a police officer in Morocco. In 2008, Applicant opened a bank account in Morocco to hold funds for a land purchase. In 2018, he estimated that he had about \$9,000 in the account. In 2013, he purchased an apartment in Morocco as a residence for his mother and intends to sell it after she passes away. Applicant has about \$30,000 in a U.S. checking account and believes that he has a retirement account in this country from previous employment.

Morocco is an important security, trade, and development partner with the U.S. However, terrorists attack tourist sites, government facilities, and the U.S. consulate. In addition, the country is experiencing protests over problems with the economy, police brutality, and corruption.

The Judge's Analysis

The Judge concluded that Applicant's family members residing in Morocco pose a heightened risk of foreign exploitation. They also could place Applicant in a conflict of interest. The Judge noted Applicant's near daily contact with his mother and a sibling. She cited to evidence of his childhood friend who is a police officer and his cousin who is retired from the military. She

also stated that Applicant has some significant financial assets in Morocco. Overall, the Judge concluded that Applicant had not mitigated the Guideline B concerns raised in his SOR.

Discussion

Applicant's brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. He challenges some of the Judge's findings. For example, he asserts that his visits to Morocco were principally to visit family and not friends; that he talks with his relatives only several times a week rather than daily; that he has a fairly substantial net worth in the U.S.; and that his last contact with the military retiree cousin was fortuitous. We have considered Applicant's arguments in light of the evidence, Applicant's SOR admissions, and the official notice documents regarding Morocco that the Judge included in the record. We conclude that the Judge's material findings of security concern are based upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1. *See* ISCR Case No. 18-01564 at 3 (App. Bd. May 30, 2019). Applicant has not identified any harmful error in the Judge's findings. Accordingly, the Judge's findings of fact are sustainable.

The balance of Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence. However, a disagreement with the Judge's weighing of the evidence or an ability to argue for a different interpretation of the record is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020).

The record supports a conclusion that the Judge 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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. 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