KEYWORD: Guideline B

DIGEST: Although the Judge erred in making those challenged findings of fact, such errors were harmless. The evidence supports the Judge's conclusion that Applicant has made "some extraordinary moves" in returning to Israel over the past 40 years. Decision at 7. Since becoming a U.S. citizen, Applicant has returned to Israel on three occasions to reside there for a number of years, which includes stints when he served in the Israeli military and worked for the Israeli Government. Adverse decision affirmed.

CASE NO: 19-02305.a1

DATE: 09/09/2020

DATE: September 9, 2020

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 Department of Defense (DoD) declined to grant Applicant a security clearance. On November 15, 2019, 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 April 28, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 erred in her findings of fact and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was born in Israel. He is a dual citizen of Israel and the United States. He possesses a valid Israeli passport that he uses to travel to Israel. He expressed a willingness to renounce his Israeli citizenship to obtain a security clearance.

While in his mid-teens, Applicant moved to the United States with his family. He obtained his undergraduate education in the United States. In the early 1980s, he became a U.S. citizen. Soon thereafter, he moved back to Israel to marry an Israeli women. He served in the Israeli military for about four years in the mid-1980s. He and his first wife had two children who were born in Israel. He and his family moved to the United States in the early 1990s. They moved back to Israel and lived there for about three years in the mid-1990s. They then moved to Canada, where he lived and worked for about five years. While in Canada, he purchased a home in Israel for over $200,000. In about 2000, he and his family moved back to Israel, and he worked there for about three years. After deciding to divorce, he left his wife and children in Israel and returned to the United States. He continued to care for, and maintained contact with, his children. In about 2006, he returned to Israel when one child had a dispute with his ex-wife. About a year later, he moved back to Israel for about three years to provide emotional support to one child. While in Israel, Applicant met his current wife through the internet. She is from a former Soviet republic. She moved to Israel, and they married about ten years ago. They have one child who was born in Israel.

About ten years ago, Applicant worked for the Israeli Government for about one year. This job involved his professional field of expertise. He became discontented in this job before moving to Canada for a short period. About eight years ago, he returned to the United States with his wife and child. About six years ago, he purchased a home in the United States. He began working for his current employer about four years ago.

About two years ago, Applicant returned to Israel for the marriage of one his children from his first marriage. Both of his children from that marriage are dual citizens of Israel and the United States. Both are married. One owns a house in Israel valued at about $500,000. He maintains

regular contact with them. He also maintains contact with several friends and professional associates who are citizens and residents of Israel.

Applicant has received praise from his company for his hard work and dedication. His company president has recognized his achievements and nominated him and his team for a corporate award.

Israel is a parliamentary democracy. Over the years, the United States and Israel have developed a close friendship based on their common democratic values and security interests, although occasionally those interests have diverged. Terrorism is an ongoing threat in Israel. Several U.S. Government employees have been prosecuted for disclosing classified information to individuals connected to the Israeli Government. Israel has an active program of gathering proprietary information from U.S. companies.

The Judge's Analysis

Applicant's relationships with foreign family members, friends, and associates create a heightened risk of foreign influence and exploitation. He maintains an Israeli passport and citizenship. For most of his life, he has traveled to and from Israel to live and work. He is close to his children in Israel. "Full mitigation under AG ¶ 8(a), 8(b), and 8(c) has not been established. Applicant's foreign relationships poses a heightened security risk." Decision at 8.

Discussion

In his appeal brief, Applicant contends that Judge erred in some of her findings of fact. When a Judge's findings are challenged, we examine them to see if they are supported by substantial evidence, *i.e.*, "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, e.g.,* ISCR Case No. 16-04094 at 2 (App. Bd. Apr. 20, 2018).

Applicant asserts the Judge erred in her findings regarding the dates and number of times he returned to Israel and his work history. He contends she found he returned to Israel five times when in fact he only did so three times and argues this error gave a false impression of his history of going back to Israel. He first notes the Judge erred in her finding that he returned to Israel in 1993 and lived there for about three years. At the hearing, he testified that he lived and worked in the United States from 1990 to 1996 before moving to Canada. Tr. at 25-26 and 30-32. He next notes the Judge erred in finding he visited Israel in 2006 after one of his children had an argument with his ex-wife. He testified, however, that he did relocate to Israel in 2007 following that argument to support the child, and he remained there until about 2010 or 2011. Tr. at 35-37. Although the Judge erred in making those challenged findings of fact, such errors were harmless. *See, e.g.*, ISCR Case No 19-01220 at 3 (App. Bd. Jun. 1, 2020) (noting an error is harmless if it did not likely affect the outcome of the case). The evidence supports the Judge's conclusion that Applicant has made "some extraordinary moves" in returning to Israel over the past 40 years. Decision at 7. Since becoming

a U.S. citizen, Applicant has returned to Israel on three occasions to reside there for a number of years, which includes stints when he served in the Israeli military and worked for the Israeli Government.

Applicant notes that he was granted a security clearance while employed in the United States between 1993 and 1995. He argues that security clearance was granted after he had served in the Israeli military and when he had similar contacts in Israel. He contends his recent denial of a security clearance "simply makes no sense." Appeal Brief at 2. However, the Government is not estopped from making an adverse clearance decision because an individual has previously held a security clearance. In that regard, the Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct or circumstances having negative security significance. *See, e.g.*, ISCR Case No. 04-01961 at 4 (App. Bd. Jul. 12, 2007). In this case, we note, since the granting of his previous security clearance, Applicant has worked for the Israeli Government and two of his children now reside in Israel. His assertion that he previously held a security clearance fails to establish any error.

Applicant discussed the religious affiliations of his wife and child. It is well established that the Department of Defense does not adjudicate an applicant's clearance eligibility based on his or her religion. *See, e.g.*, ISCR Case No. 10-02902 at 3 (App. Bd. May 16, 2011) and ISCR Case No. 11-02842 at 3 (App. Bd. Jun. 7, 2012). Similarly, we do not adjudicate clearance based on the religion of an applicant's family members.

Applicant raises other arguments that amount to a disagreement with the Judge's weighing of the evidence. He argues, for example, that he came to the United States over 40 years ago, has worked most of his career here, and has extensive family members in this country. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 19-01431 at 4 (App. Bd. Mar. 31, 2020). Applicant also notes the denial of a security clearance will negatively affect him; however, the adverse impacts of security clearance decision are not relevant considerations in evaluating national security eligibility. *See, e.g.*, ISCR Case No. 19-02397 at 1-2 (App. Bd. May 6, 2020).

Applicant has failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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."

Order

The Decision is **AFFIRMED**.

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