



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203
 (703) 696-4759**

Date: May 4, 2022

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 In the matter of:)
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 Applicant for Security Clearance)
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ISCR Case No. 21-00362

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 June 16, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 23, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi 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 the Judge erred in his findings of fact, and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. For the reasons stated below, we affirm the Judge’s decision.

The SOR alleged that Applicant’s wife is a citizen of Pakistan residing in the United States, and that his grandmother and parents-in-law are citizens and residents of Pakistan. The Judge found in favor of Applicant on the allegation regarding his wife and against him on the other allegations. The Judge’s favorable finding has not been raised as an issue on appeal.

The Judge's Findings of Fact and Analysis

Applicant is in his late twenties, is married, and has earned a bachelor's degree. He has been employed by a defense contractor since 2020. Born in Pakistan, he was brought to the United States just before his 18th birthday. While residing with his parents in the United States when they became naturalized U.S. citizens, he automatically became a U.S. citizen by operation of law.

Applicant is also a citizen of Pakistan. In 2016, he obtained a Pakistani National Identity Card for Overseas Pakistanis (NICOP). He used his Pakistani passport to visit Pakistan in 2009 and 2015, and used his U.S. passport and NICOP to travel there in 2017, 2018, and 2019.

Applicant's grandmother is an unemployed citizen and resident of Pakistan. He has visited her during his trips to Pakistan. He has monthly contact with her and described his relationship with her as casual. His parents-in-laws are also citizens and residents of Pakistan. Since marrying in 2017, he has visited with his in-laws during trips to Pakistan. He has quarterly contact with his father-in-law and monthly contact with his mother-in-law. His father-in-law is currently self-employed in the clothing industry. Applicant is unaware of other information concerning the employment history of his grandmother or parents-in-law. He did not provide documentary evidence of his financial status, community involvement, or employment performance. He provided no character references. Since he chose to have a decision on the written record, the Judge noted he was unable to conduct inquiries at a hearing.

"Pakistan is a haven for numerous Islamist extremist and terrorist groups, and successive Pakistani governments are widely believed to have tolerated and even supported some of them as proxies in Pakistan's historical conflicts with its neighbors. Terrorists have targeted U.S. diplomats and diplomatic facilities in the past. . . . U.S. citizens have been kidnapped in other countries and held in Pakistan." Decision at 2. In 2011, the Office of National Counterintelligence reported that sensitive U.S. economic information and technology was targeted by intelligence services, research institutions, and citizens in dozens of countries, including Pakistan. "In 2019, the U.S. Director of National Intelligence testified to 'Pakistan's recalcitrance in dealing with militant groups' and predicted that Pakistan will continue to threaten U.S. interests 'by developing new nuclear weapons capabilities, maintaining its ties to militants, restricting counterterrorism cooperation, and drawing closer to China.'" *Id.* Due to terrorism and sectarian violence, the State Department issued a level-3 advisory ("reconsider travel") for Pakistan in early 2022. *Id.* at 3. Given these circumstances, Applicant's family ties in Pakistan are sufficient to establish Guideline B disqualifying conditions.

Applicant has provided very little background information on his grandmother and in-laws living in Pakistan. Applicant maintains regular or recurring contact with each person, and has visited often, but I do not know whether their family members in Pakistan have had any personal or political ties to or employment with the Pakistani government, military, intelligence agencies, defense establishment, or terrorist group. It is understandable that Applicant maintains some ties to his and his spouse's family in Pakistan, but it is not credible that he knows (sic) very little about the family members' backgrounds after maintaining telephone/Internet and personal contact over the years. Additionally,

he has not provided clear and convincing information regarding his financial status, community involvement, employment performance, or personal and professional character showing the degree of his ties and loyalty to the U.S.; information that would have been helpful in establishing mitigating credit. Based on the record presented, I am unable to conclude that Applicant's close ties to family members in Pakistan would not place him in a conflicted position. . . . Based on the paucity of information provided in the record, I am unable to find any of the mitigating conditions to be fully applicable. [Decision at 7-8.]

Discussion

New Evidence

The Appeal Board is prohibited from receiving and considering new evidence on appeal. Directive ¶ E3.1.29. Interspersed throughout Applicant's appeal brief is information that was not presented to the Judge for consideration. This information constitutes new evidence that the Appeal Board cannot consider.

Findings of Fact

Applicant challenges a number of the Judge's findings of fact. We examine a Judge's challenged findings to see if they are supported by substantial evidence, that is, "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. 17-02145 at 3 (App. Bd. Sep. 10, 2018).

Applicant contends the Judge erred in finding that he provided financial support to his wife before she moved to the United States. The evidence reflects that Applicant and his wife married in January 2017, that she moved to the United States in January 2018, and that he stated he provided "[d]aily or weekly support since this is my wife." Department Counsel's File of Relevant Material (FORM) Item 3 at 9, Item 4 at 23 and 33, and Item 5 at 3. The Judge's finding that Applicant provided support to his wife before she moved to the United States was a reasonable inference drawn from the evidence. Applicant also argues the Judge erred in finding that he has no children, that he was brought to the United States just before his 18th birthday in 2012, and that he used his Pakistani passport to travel to Pakistan in 2015 after becoming a U.S. citizen. These arguments have merit. Pages 14-15 of FORM Item 3 reflect that he has a child. Pages 8 and 13 of FORM Item 4 reflect that he received a U.S. permanent resident card in 2007 and attended high school in the United States from 2009 to 2013. Page 1 of FORM Item 5 reflects he traveled to Pakistan in 2015 on his U.S. passport. Individually or collectively, however, these errors were harmless because they did not likely affect the outcome of the case. *See, e.g.*, ISCR Case No. 20-03782 at 4 (App. Bd. Dec. 7, 2021).

Other Purported Errors

Applicant notes the Judge concluded that he failed to provide evidence about his financial status, employment performance, and personal and professional character, and he argues the SOR

did not list that such evidence was required. To the extent that he is challenging the adequacy of the SOR, we do not find that argument persuasive. Applicants are entitled to receive reasonable notice of the allegations being made against them so that they can have a meaningful opportunity to respond to the allegations. Directive ¶¶ 4.3.1-2 and E3.1.3. An SOR is not required to allege every piece of evidence that is relevant and material to evaluating an applicant's security eligibility. *See, e.g.*, ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). In this case, the SOR was legally sufficient. It provided Applicant with adequate notice of the Government's security concerns under Guideline B.

As a related matter, Applicant's appeal brief summarizes information from his security clearance application that is favorable to him, including matters regarding his employment activities (Section 13A), police record (Section 22), and financial record (Section 26), and he argues the Judge failed to consider that information. In this summary, he intersperses new evidence regarding the quality of his work performance and his financial situation that we cannot consider. His arguments based on that summary are insufficient to establish the Judge erred in analyzing the evidence. More specifically, he has failed to rebut the presumption the Judge considered all the evidence in the record. This presumption is not rebutted merely because the appealing party can point to information in the record evidence that was not mentioned or discussed in the Judge's decision. *See, e.g.*, ISCR Case No. 01-09781 at 3 (App. Bd. Sep. 25, 2002).

Applicant takes issue with the Judge's statement, "it is not credible that [Applicant] knows (sic) very little about the family members' backgrounds after maintaining telephone/Internet and personal contact over the years." Decision at 7. The Appeal Board, however, is required to give deference to a Judge's credibility determination. Applicant's arguments regarding the Judge's credibility determination fail to provide any persuasive reason why we should not give it deference.

The balance of Applicant's arguments amounts to a disagreement with the Judge's weighing of the evidence. For example, he argues that he has limited contact with his grandmother and in-laws, that those contacts are casual and do not raise foreign influence security concerns, and that he is not vulnerable to exploitation. However, an applicant's stated intention as to what he might do in the future in a hypothetical situation is generally entitled to limited weight. *See, e.g.*, ISCR Case No. 06-25202 at 6 (App. Bd. Feb. 22, 2008). Common sense and a knowledge of the ways of the world suggest that even those whose character is unimpeachable, if faced with a serious dilemma, could be tempted to place the safety of loved ones ahead of other competing interests. *See, e.g.*, ISCR Case No. 19-03991 at 5 (App. Bd. Dec. 14, 2021). Applicant's arguments fail to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

In responding to the SOR, Applicant admitted each of the SOR allegations. The burden was on him to present evidence to rebut, explain, extenuate, or mitigate the security concerns arising from those allegations. Directive ¶ E3.1.15. We find no basis to disrupt the Judge's conclusion that Applicant failed to meet his burden of production to mitigate the alleged security concerns.

Request for a Remand

Applicant requests the Board remand the Judge's decision so that he may present additional evidence. It is well settled that absent a showing that an applicant was denied a reasonable opportunity to prepare for the proceeding below or was denied a reasonable opportunity to present evidence on his or her behalf, an applicant is not entitled to a remand just to have another chance to present his or her case. *See, e.g.*, ISCR Case No. 14-03347 at 3 (App. Bd. May 27, 2016). If the Board were to grant Applicant's request for a remand or allow him to submit new evidence in this case, then the Board would be giving him special treatment and denying other, similarly-situated applicants of their right to receive the fair, impartial, and even-handed application of Executive Order 10865 and the Directive. *Id.*

Conclusion

Applicant failed to establish the Judge committed any harmful errors. 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, 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: James F. Duffy
James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board