



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: April 11, 2024

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 21-00525</p>
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 21, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On February 9, 2024, Defense Office of Hearings and Appeals Administrative Judge Ross D. Hyams denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline J, the SOR alleged that Applicant agreed to harbor two Country A nationals, including a 17 year-old, who were to be trafficked from Country A to Country B for the purpose of engaging in prostitution, in violation of 18 U.S.C. §1591 (the federal prohibition of sex trafficking of children). Under Guideline E, this same conduct was cross-alleged. Additionally, the SOR alleged that Applicant was barred from U.S. military installations in Country B for this conduct and that he falsified material facts in an affidavit related to this matter. The Judge found

against Applicant on all allegations. On appeal, Applicant argues that the Judge improperly admitted evidence offered by the Government. We disagree and affirm the decision below.

Applicant's argument concerns a Naval Criminal Investigative Service (NCIS) report of investigation that the Judge admitted at hearing as Government Exhibit (GE) 3. Through Counsel, Applicant notes that GE 3 is the "primary source" of the Judge's decision and that the Judge's findings of fact "are almost entirely based" upon the document. Appeal Brief (AB) at 4. On appeal, Applicant argues through his Counsel that the report of investigation was not authenticated by a witness as required by the Directive. This argument is without merit.

In September 2022, almost a year prior to the hearing, the Government provided Applicant's Counsel with all proposed exhibits, including GE 3. Hearing Exhibit 1 at 1. At the hearing in August 2023, the Judge asked Applicant's Counsel if he objected to any of the Government's exhibits. Applicant's Counsel responded, "No objections," whereupon the Judge admitted all of the Government's exhibits, including GE 3. Tr. at 14–25. Having failed to object to the admissibility of GE 3 at the hearing, Applicant cannot now complain on appeal that the Judge's consideration of the document was error. *See, e.g.*, ISCR Case No. 99-0519 at 8–9 (App. Bd. Feb. 23, 2001).

Applicant has failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also*, AG ¶ 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: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board