

KEYWORD: Guideline B; Guideline C

DIGEST: The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's adverse security clearance decision is arbitrary capricious or contrary to law. Adverse decision affirmed.

CASENO: 10-02904.a1

DATE: 03/11/2011

DATE: March 11, 2011

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In Re:)	
)	
-----)	ISCR Case No. 10-02904
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 24, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 30, 2010, after the hearing, Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse clearance decision is arbitrary, capricious, or contrary to law.

In this case, the Judge made the following essential findings of fact: Applicant was born in Syria in 1959, immigrated to the United States in 1988, and became a United States citizen in 1995. He previously served in the Syrian military. Applicant’s spouse immigrated to the United States from Syria in 2005 and will become a United States citizen in the near future. His five year old child is a United States citizen. Applicant’s parents, mother-in-law, and multiple siblings live in Syria. His father is a wealthy businessman. Applicant talks to him by telephone approximately once a month. He talks to his mother by telephone approximately once every two to four weeks. His family members in Syria are very close and loyal to each other, and they provide financial support to anyone in the family who is elderly and requires assistance. Applicant traveled to Syria to visit his parents every year from 2002 to 2008 (using a Syrian passport) and stayed on each occasion for 30 to 35 days. Decision at 3-4.

Syria is ruled by an authoritarian regime. It is included on the U.S. State Department List of State Sponsors of Terrorism. There are several known terrorist groups in Syria, and the Syrian Government continues to provide political and material support to Hezbollah and Palestinian terrorist groups. A travel warning for Syria warns about the risks of terrorism due to the September 2006 attack on the U.S. embassy in Damascus. The United States instituted economic sanctions against Syria due to their active and passive support of terrorism. No commercial aircraft owned or operated by the Syrian Government may take off or land in the United States. There have been human rights abuses in Syria including arbitrary arrests and detentions; torture and physical abuse of prisoners and detainees; arbitrary and unlawful deprivation of life; and restrictions on freedom of speech, press, assembly, and association. Syrian security personnel have placed foreign visitors under surveillance, have monitored telephones, and have searched hotel rooms and possessions of foreign citizens. Decision at 5.

On appeal, Applicant seeks reversal of the Judge’s adverse decision under Guideline B arguing that: 1) his wife will soon become a United States citizen, 2) he has not visited Syria since December 2008, 3) his parents know little about what he does in the United States, and 4) he has significant financial ties to the United States. Those arguments do not demonstrate that the Judge’s decision is arbitrary, capricious or contrary to law.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to establish mitigation. Directive ¶ E3.1.15. 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. 07-07635 at 4 (App. Bd. Aug. 22, 2008).

A review of the record indicates that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances and considered the possible application of relevant conditions and factors. He found in favor of Applicant under Guideline C and as to one of the Guideline B factual allegations. However, he reasonably explained why the evidence which the Applicant presented in mitigation was insufficient to overcome all of the government's security concerns. The Board does not review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious or contrary to law. The Board concludes 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 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). Therefore, the Judge's unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board