

KEYWORD: Guideline C; Guideline B

DIGEST: The Judge concluded that Applicant’s circumstances raise a possibility that he could become a target of those seeking access to classified information. In addition to his possession of a foreign passport, the Judge also relied on evidence of Applicant’s assets in Israel and his closeness to his family there. The Judge’s conclusions are supported by the record evidence. Adverse decision affirmed.

CASE NO: 11-02842.a1

DATE: 06/07/2012

DATE: June 7, 2012

In Re:)	
)	
-----)	ISCR Case No. 11-02842
)	
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 July 11, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) and

Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 26, 2012, after the hearing, 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 issues on appeal: whether the Judge failed to consider all of the record evidence and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant was born in Israel. He grew up there, serving his mandatory time in the Israeli military. In the early 1980s he came to the U.S. to attend college. He became a naturalized citizen in the early 1990s. He considers himself to be a dual citizen of the U.S. and of Israel. After he became a U.S. citizen, he possessed a valid Israeli passport. He used this passport to travel to Israel in the mid to late 1990s to visit members of his family.

In the early 2000s, Applicant sought a security clearance. DOHA raised security concerns under Guidelines B and C. Applicant went to a hearing, at which he advised the Judge that he was willing to renounce his Israeli citizenship and surrender his passport. He also testified as to his willingness to transfer to his brother his interest in an apartment in Israel. The Judge in that earlier hearing found in Applicant's favor.

However, Applicant never completed the process of surrendering his passport and renouncing his citizenship. He testified that it is difficult for him to get in and out of Israel on a U.S. passport and that it is a priority for him to be able to travel to that country to visit his family. In 2007, he obtained a renewed Israeli passport and used it to travel to Israel for a family wedding. The passport is not set to expire until 2017. As he had in the earlier hearing, Applicant expressed a willingness to surrender his passport.

Applicant has a brother, a sister-in-law, and cousins who are citizens and residents of Israel. He has significant assets in Israel, including the apartment referenced above. He has a bank account in Israel with about \$100,000 in it. He asserts that his net worth in the U.S. is about \$20,000,000, which includes real estate, although he has not provided sufficient documentary evidence to corroborate this claim. Applicant enjoys an excellent reputation for his honesty, trustworthiness, and responsibility.

Israel and the U.S. have a close relationship, based on common democratic values, and the U.S. is Israel's largest trading partner. However, the U.S. is concerned about Israel's sale of military property to China, inadequate Israeli protection of U.S. intellectual property, and espionage-related cases involving Israeli citizens. Terrorist organizations launch military attacks on targets in Israel.

In the Analysis, the Judge concluded that Applicant's circumstances raise a possibility that he could become a target of those seeking access to classified information. In addition to his continued possession of a foreign passport, the Judge also relied on evidence of Applicant's assets in Israel and his closeness to his family there. She concluded that Applicant had failed to mitigate

the security concerns in his case.¹ In her discussion of the whole-person concept, the Judge cited to evidence that Applicant wished to be able to travel to Israel on an Israeli passport whenever he wants to, despite knowing the security significance of use of a foreign passport. She stated in effect that Applicant's conduct, viewed as a whole, supported a whole-person assessment of security concerns cognizable under Guideline B.

Applicant cites to record evidence which he believes supports his case for a security clearance. For example, he points to evidence as to the conditions imposed upon him in renouncing his Israeli citizenship and to his character references. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-00542 at 2 (App. Bd. Apr. 13, 2012). Applicant has not rebutted this presumption.

Applicant explains his reluctance to present evidence of his financial assets in the U.S. Although his concerns may be understandable, they do not undermine the Judge's conclusion that he had failed to corroborate his assertions as to the extent of these financial assets. *See* Directive ¶ E3.1.15 ("The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision").

Applicant cites to evidence of other persons who have served the U.S. in various capacities. Applicant notes the religion or foreign ties of the cited individuals. Each case must be decided on its own merits. *See* Directive, Enclosure 2 ¶ 2(b). Furthermore, an applicant's eligibility for a clearance is not increased by how the cases of other applicants are processed. *See, e.g.*, ISCR Case No. 09-04216 at 3 (App. Bd. Jan. 31, 2011). It is the established policy of the Department of Defense that "an individual's religious affiliation plays no part in the security clearance process." *See, e.g.*, ISCR Case No. 10-02902 at 3 (App. Bd. May 16, 2011).

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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

¹We note that the SOR alleges, *inter alia*, that Applicant obtained an Israeli passport that does not expire until 2017. The allegation immediately following states that Applicant is unwilling to surrender or destroy this passport. The Judge found against Applicant on both of these allegations. However, an applicant's conduct regarding the surrender of a foreign passport is a Guideline C mitigating condition. Directive, Enclosure 2 ¶ 11(e). "Failure to take affirmative steps to comply with a mitigating condition cannot be used to turn the mitigating condition into a disqualifying condition." ISCR Case No. 01-02270 at (App. Bd. Aug. 29, 2003).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

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

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board