

KEYWORD: Guideline C; Guideline B

DIGEST: The Judge’s findings and conclusions are sustainable. Applicant has not demonstrated that the Judge ignored the whole-person factors in arriving at his decision. Applicant merely offers an alternative interpretation of the evidence. Adverse decision affirmed.

CASE NO: 11-05726.a1

DATE: 05/07/2013

DATE: May 7, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-05726
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Joseph R. Price, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 16, 2012, DoD 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 February 11, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Grattan Metz, Jr. denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found: Applicant was born in the United States in 1971, the son of two citizens of Saudi Arabia. The family returned to Saudi Arabia shortly thereafter, and Applicant was raised and educated in Saudi Arabia. Applicant has held Saudi passports and used them for travel during the 2000s. At the time of his security clearance application, Applicant surrendered his Saudi passport to his company facility security officer, and it has since expired.

Applicant married a Saudi citizen in Saudi Arabia and has two sons by her. The sons derive U.S. citizenship through him. Applicant and his wife divorced, remarried, and divorced again. While in the U.S., his wife became a U.S. citizen.

In the 1990s, while in the U.S., Applicant entered a Saudi Arabian government-sponsored scholarship program. The program covered 100% of his undergraduate expenses and 80% of his graduate school expenses. Applicant estimates that he received about \$150,000 in direct and indirect support from the Saudi government. The program technically required recipients to return to Saudi Arabia for work, but the requirement is never enforced, owing to the high Saudi unemployment rate. Applicant also receive medical insurance through the government-sponsored scholarship program because he serves as the required male sponsor for his sister and stepsister, who are in the U.S. attending college. Applicant estimates that the Saudi-sponsored medical insurance has covered about \$25,000 of his medical expenses. He would like to keep the coverage because it is free to him.

Applicant's parents, step-parents, brother, step-siblings and half-siblings, and ex-mother-in-law are resident citizens of Saudi Arabia. His ex-wife and children are dual citizens of the U.S. and Saudi Arabia. His sister and half-sister are Saudi citizens living in the U.S. Applicant's contacts with his stepparents and step-siblings are virtually non-existent. While he asserts that he has little actual contact with his mother or brother, his sense of family connection and obligation is such that he would want to return to Saudi Arabia for either of their funerals, at a minimum.

The United States and Saudi Arabia share a common concern about regional security in the Middle East. Despite generally good relations, however, the United States remains concerned about human rights conditions in Saudi Arabia. U.S.-Saudi relations were strained after the September 2001 terrorist attacks. During 2003 and 2004, terrorists and suicide bombers kidnapped or killed Americans and attacked the U.S. consulate. A travel warning is in effect for Saudi Arabia due to concerns about potential terrorist activity directed against U.S. citizens and interests. Individuals and organizations based in Saudi Arabia have been designated by the U.S. government as providing financial and material support to Al-Qaeda and other terrorist groups. Saudi Arabia is not known to target its ex-patriate citizens to obtain sensitive information.

The Judge concluded: Applicant received about \$150,000 in education benefits from the Saudi government while he was pursuing degrees in the U.S. He continues to receive Saudi government education benefits while serving as a sponsor for his sister and half-sister. He also

renewed his Saudi passport several times after returning to the U.S. He used it several times in preference to his U.S. passport to travel to Saudi Arabia. This conduct raises security concerns under the adjudication guideline for foreign preference, which he failed to mitigate. Applicant's active exercise of dual citizenship after being born a U.S. citizen was done deliberately. Although he stated a willingness to forgo the medical benefits and to renounce his Saudi citizenship in the past, he demonstrates a palpable reluctance to do so, and has taken no action to renounce his Saudi citizenship. Although he surrendered his passport and understands the potential consequences to his clearance should he regain possession of it, that action is not enough to overcome the adverse concerns raised by his other conduct. Indeed, it seems likely he would renew his Saudi passport if circumstances warranted. Guideline C is resolved against Applicant.

The Government established that Applicant's contacts with his family in Saudi Arabia created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. Applicant has resided in the U.S. less than half his life, although most of his working life. His financial interests are all in the U.S. However, his contacts with his mother and brother, both of whom reside in Saudi Arabia, and ex-wife, who works for the Saudi embassy, remain problematic.

Whole-person considerations require no different result. Applicant is talented, hardworking, and possesses good character and integrity. However, this finding does not preclude a finding that Applicant's facts and circumstances still pose a security risk.

Applicant argues that the Judge ignored the whole-person factors when concluding that Applicant's Saudi Arabian background and his receipt of health and education benefits from the Saudi government disqualified him from holding a security clearance. He asserts that the Judge erred by concluding that he had not mitigated the concerns under Guidelines B and C. He points to evidence of his deep and longstanding relationships and loyalties to the U.S., which he argues make it obvious that he would resolve any conflict of interest in favor of the U.S. interest. Applicant states that his decision to participate in the scholarship program in order to travel to and study in the United States plainly reflects his preference for the United States.

When the whole record is considered, the Board concludes that the Judge's findings and conclusions under Guideline C are sustainable, notwithstanding the favorable evidence cited by Applicant. The record of Applicant actively exercising dual citizenship after being born a U.S. citizen is extensive. It includes longstanding and repeated use of a Saudi passport as an adult, use of the Saudi passport in preference to his U.S. passport on several occasions, continued acceptance of substantial monetary benefits from the Saudi government, and a reluctance to renounce his Saudi citizenship. Applicant argues that there is no basis for the Judge's conclusion that he would renew his Saudi passport if circumstances warranted. The Board agrees that this particular conclusion is not explained, is speculative, and is not supported by the evidence. Nevertheless, despite this error, the Judge's overall analysis of the evidence under Guideline C is supported by the record.

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*. See, e.g., ISCR Case No. 06-

10320 at 2 (App. Bd. Nov. 7, 2007). 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. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Regarding Guideline C, Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence.

Under Guideline B, the Judge concluded that Applicant's contacts with his mother and brother, as well as his ex-wife, with whom he maintains contact, remain problematic. The evidence indicates that the amount of contact between Applicant and his mother and his brother is not extensive. The Judge does point out, however, the fact that Applicant feels a sense of obligation to his relatives in Saudi Arabia such that he would return to that country to attend their funerals, at a minimum. The Judge concluded that this evidenced a sense of family connection or obligation that created heightened risk and that Applicant failed to produce sufficient evidence to overcome the Government's security concerns. These conclusions are sustainable. Applicant's assertion that he has no meaningful contacts with Saudi Arabia is not supported by the record.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, 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 ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board