

KEYWORD: Guideline B

DIGEST: An applicant with family members living in a hostile country has a “very heavy burden” to show that they are not a means through which the applicant could be coerced into revealing classified information. There is a rebuttable presumption that a person has ties of affection for immediate family members of his or her spouse. Adverse decision affirmed.

CASE NO: 11-12659.a1

DATE: 05/30/2013

DATE: May 30, 2013

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In Re:	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Julia Szafraniec, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 21, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 13, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 application of the mitigating conditions and whether the whole-person analysis was in error. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant's Iranian wife immigrated to the U.S. in the late 1970s, becoming a U.S. citizen in the 1990s. She has retained her Iranian citizenship and has an expired Iranian passport. Her parents are Iranian citizens who live in Iran. She also has several siblings who are Iranian citizens. Applicant's wife communicates daily with her mother. Her parents sent money to Applicant and his wife for them to invest on the parents' behalf. Applicant and his wife spent the funds on a rental townhouse near their home.

The Judge made extensive findings about Iran, based on official-notice documents submitted by the Government. These findings include the following: Iran has long been designated by the U.S. as a state sponsor of terrorism. It has provided weapons, training, and funding to terrorist groups and to militant groups that target U.S. forces. Iran has a poor human rights record. Foreign visitors may be placed under surveillance, their hotel rooms and telephone conversations monitored and their belongings searched. It considers U.S.-Iranian dual nationals as Iranian citizens. It is seeking the capability to produce nuclear weapons. There have been numerous cases of persons attempting to export U.S. technology to Iran. Monetary remittances from Iran must take place through the Iranian banking system. Remittances that occur through non-banking channels can expose the person in Iran to monitoring and penalties if detected.

### **The Judge's Analysis**

The Judge concluded that Applicant's Iranian relatives raised security concerns under Guideline B. He cited to evidence that Iran supports terrorism and abuses human rights, concluding that the country is more likely to use improper or illegal means to obtain classified information. He concluded that Applicant's in-laws in Iran present heightened security risks. He stated that the means whereby the parents transferred funds to Applicant and his wife are unknown, but the evidence raises a real possibility that the transfer could be tracked. The Judge also stated that Applicant's wife's contacts with her parents are significant and ongoing, and, considering Applicant's family circumstances in the context of the geopolitical situation of Iran, a heightened security risk exists. Although noting Applicant's significant ties within the U.S., the Judge concluded that Applicant had not mitigated the concerns raised by his foreign in-laws. The Judge noted Applicant's having held a clearance for many years and his lengthy service to the Defense industry. However, he concluded that the risks inherent in Applicant's family circumstances militated against granting him a clearance.

### **Discussion**

After considering the record as a whole, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision. An applicant with family members

living in a country hostile to the U.S. has a “very heavy burden” to show that they are not a means through which the applicant could be subjected to coercion or exploitation. *See, e.g.*, ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011). There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the persons’ spouse. The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases, as is the geopolitical situation of the foreign country. *Id.* 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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

### **Order**

The Decision 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