

KEYWORD: Guideline B

DIGEST: The Judge's ultimate adverse decision is sustainable on this record. Adverse decision affirmed.

CASENO: 12-05609.a1

DATE: 09/04/2013

DATE: September 4, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-05609
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 17, 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 decision on the written record. On June 28, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Tuider denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was born in Lebanon, immigrating to the U.S. in the mid-1980s. He became a U.S. citizen in the early 2000s. He was denied a security clearance in 2007 because of foreign influence.

Applicant has numerous relatives who are citizens and/or residents of Lebanon. His wife is a dual citizen of the U.S. and Lebanon. His parents-in-law, a sibling-in-law, two siblings, and other extended family members are citizens and residents of that country. Applicant's mother-in-law lives with Applicant and his wife in the U.S., but she visits Lebanon for about three months each year. Applicant inherited two apartments in Lebanon. He also inherited part ownership of a farm and a vacation home. He made several trips to Lebanon in the mid to late 2000s. The estimated value of his property holdings in Lebanon is between \$75,000 and \$100,000.

Lebanon is a republic, but its foreign and internal policies are heavily influenced by Syria. Syria maintains intelligence agents in Lebanon and is a state sponsor of terrorism. The Lebanese government recognizes Hezbollah, which the U.S. has termed a foreign terrorist organization. Lebanon has a poor human rights record. Moreover, militias and non-Lebanese forces have used informer networks and have monitored telephones to obtain information.

The Judge's Analysis

The Judge concluded that Applicant's family contacts in Lebanon raised concerns under Guideline B. He stated that Applicant's mother-in-law's annual travels to Lebanon entailed a "heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Decision at 6. The Judge also noted the geopolitical situation in Lebanon, specifically its human rights issues and the operation of terrorist organizations within its borders. In evaluating Applicant's case for mitigation, the Judge concluded that Applicant's substantial and ongoing connections to his spouse and mother-in-law, as well as his property interests in Lebanon, militated against granting a clearance. In the whole-person analysis, the Judge concluded that the reasons for denying Applicant a clearance are more significant and those for granting.

Discussion

Applicant’s appeal brief contains evidence not included in the record regarding his family circumstances. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See* ISCR Case No. 10-03125 at 2 (App. Bd. Apr. 13, 2012). After considering Applicant’s brief in light of the record as a whole, we conclude that the Judge examined the relevant data and articulated a satisfactory explanation for the decision. The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases. *See, e.g.*, ISCR Case No. 12-07670 at 3 (App. Bd. Jul. 8, 2013). In addition, evidence of Applicant’s close family connections with Lebanon, his property holdings in that country, and the Lebanese government’s human rights record support the Judge’s conclusions.¹ 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: 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

¹Applicant challenges the Judge’s conclusion that Mitigating Condition 8(f) does not apply because the condition is “not applied through a weighing and comparison of interests.” Given the language of the mitigating condition, Applicant has a valid point. However, given the totality of Applicant’s contacts to Lebanon, the favorable application of 8(f) would not have changed the ultimate adverse conclusion. The condition states: “the value or routine nature of the foreign . . . property interest is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.”

Concurring Opinion of Administrative Judge James E. Moody

I agree with my colleagues' resolution of this case. However, I don't interpret the comment addressed in Footnote 1 to mean that Judges should not weigh or compare foreign property holdings with those in the U.S. I think the Judge simply meant that 8(f) does not entail a mechanical comparison, in the sense that the mitigating condition would not apply unless the foreign holdings predominated over those in this country. In the case before us, the Judge concluded that Applicant's property in Lebanon is substantial, regardless of its share in his total wealth, which was a reasonable interpretation of the record before him.

Signed: James E. Moody _____
James E. Moody
Administrative Judge
Member, Appeal Board