

KEYWORD: Guideline B

DIGEST: The record supported the Judge’s finding that Applicant’s uncle held a high rank in the military. The Judge’s conclusion that the presence of foreign relatives in Afghanistan raised unmitigated security concerns is sustainable. Applicant’s contention that the Judge was biased against him does not overcome the presumption that the Judge was impartial. Adverse decision affirmed.

CASENO: 12-07670.a1

DATE: 07/08/2013

DATE: July 8, 2013

In Re:)	
)	
-----)	ISCR Case No. 12-07670
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Graham, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 22, 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). Department Counsel requested a hearing.

On April 25, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge James F. Duffy 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 certain of the Judge's findings were supported by substantial record evidence; whether the Judge was biased against Applicant; and 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 works for a Defense contractor. Born in Afghanistan, he was educated in that country and in the United States. He left that country in the late 1970s and lived for several months in another Mideast country. He moved to a third Mideast country, working for an organization that obtained aid such as food, clothing, etc., for persons in need. He came to the U.S. in the early 1980s and became a U.S. citizen in the mid-1980s. He has numerous relatives living in Afghanistan, including his mother, a citizen and resident of that country. Applicant speaks with her about once a month and provides her with between \$2,000 to \$4,000 per year. Applicant has three siblings and several siblings-in-law who are citizens and residents of Afghanistan. He has two uncles and several nephews who are citizens and residents of that country. One uncle was a high-ranking official in the military and, having left the service, later worked for the government of Afghanistan, assisting in military and police matters. Applicant has monthly contact with this uncle. The other uncle is retired from a position within the government of Afghanistan. Applicant has received numerous certificates for his dedication and outstanding duty performance. Although he has never been in combat, Applicant testified that he has been exposed to improvised explosive devices or to other potential attacks. Afghanistan has a poor human rights record. It faces many daunting challenges, including defeating terrorists.

The Judge's Analysis

The Judge found that Applicant's foreign relatives raised security concerns under Guideline B. He noted the instability of the government in Afghanistan and evidence that terrorists operate within its borders and concluded that Applicant's contact with his foreign relatives are neither casual nor infrequent. Given the poor security conditions in Afghanistan, the Judge stated that Applicant could be placed in a position of having to choose between his relatives and the interests of the United States. The Judge addressed Applicant's evidence that he had been exposed to danger in support of U.S. military operations, concluding that it was not sufficient to mitigate the security concerns arising from Applicant's family connections.

Discussion

Applicant challenged the Judge's finding that one of his living uncles held a high rank in the military. He cites to his testimony that he did not know for certain what his uncle's rank was. We examine a Judge's findings to see if they are supported by substantial record evidence. *See, e.g.*, ISCR Case No. 10-06195 at 3 (App. Bd. Oct. 4, 2011). In this case, Applicant admitted the SOR allegation pertaining to his uncle's rank. In addition, he testified that he took the word of another

uncle in stating the military rank in question. Although acknowledging that he had no first-hand knowledge of this matter, he did not deny that his uncle held the rank in question. Even without his SOR admission, the evidence is sufficient to support the Judge's finding.

Applicant contends that the Judge was biased against him because of his country of origin. He cites to the Judge's alleged error about the uncle's rank in support of this argument, contending that an error so purportedly egregious could only be explained as having resulted from bias. However, as stated above, the challenged finding is supportable. Applicant points to nothing in the record likely to persuade a reasonable person that the Judge lacked the requisite impartiality. Applicant has not rebutted the presumption that the Judge was impartial. *See, e.g., ISCR Case No. 11-03500 at 3 (App. Bd. Feb. 28, 2012).*

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. 10-09986 at 3 (App. Bd. Dec. 15, 2011).* In addition, the Judge's findings about the political instability in Afghanistan, human rights violations in that country, the extent of Applicant's family connections there, the prominence of some of his family members, and Applicant's frequent contact with his family support a reasonable conclusion that there exists a foreseeable risk that Applicant could come to the attention of persons interested in acquiring U.S. classified information, thereby subjecting him to a conflict between the interests of his family and those of the U.S. 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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, 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