

KEYWORD: Guideline B

DIGEST: The Appeal Board examines a Judge’s findings to see if they are supported by substantial evidence. There is a rebuttable presumption that a person has ties of affection or obligation to in-laws. Prior lengthy service to a foreign government is relevant to a Guideline B analysis. Adverse decision affirmed.

CASE NO: 13-00559.a1

DATE: 03/12/2014

DATE: March 12, 2014

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In Re:)	
)	
-----)	ISCR Case No. 13-00559
)	
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 July 12, 2013, 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 November 6, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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's findings of fact contained errors 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

The Judge made the following findings pertinent to the issues raised on appeal. Applicant was born in Afghanistan, where he attended high school and college. He served as a high-ranking officer in the Afghan military from the early 1980s to the early 1990s and, afterward, remained in the inactive reserves. He received an honorable discharge from the military. Applicant left Afghanistan in the early 1990s, moving to another country in the Middle East. Applicant came to the U.S. in the early 2000s, becoming a naturalized citizen several years later.

Applicant's spouse was born and raised in Afghanistan. She is a naturalized U.S. citizen, as are her four children with Applicant. Applicant's mother and father-in-law are citizens and residents of Afghanistan. They are not aware of the nature of his work. Although in his response to the File of Relevant Material Applicant stated that he had not spoken with them in over a year, in an earlier document he stated that he contacted them once a month.

Applicant enjoys an excellent reputation for the quality of his work performance. A supervisor stated that his efforts were critical to mission achievement.

Afghanistan has a history of political unrest. Terrorist activities remain high in Afghanistan. Terrorist organizations such as the Taliban and al-Qaeda operate within its borders, targeting U.S. and Afghan interests by such means as suicide bombings, assassination, and hostage-taking. Afghanistan has a poor human rights record. According to recent reports by the Department of State, insurgents continue to plan attacks and kidnappings of Americans and other Western nationals.

The Judge's Analysis

Concluding that Applicant's circumstances raised Guideline B concerns, the Judge entered favorable findings regarding three allegations concerning Applicant's own immediate family. However, the Judge concluded that Applicant had failed to mitigate concerns arising from his in-laws in Afghanistan and his former service in the military. She stated that, given the presence of foreign terrorist organizations within the borders of Afghanistan, she could not rule out the possibility that Applicant's in-laws could become a means through which he could be subjected to coercion or duress. Though acknowledging that loyalty to foreign in-laws is a positive character trait, the Judge stated that Applicant had not provided evidence sufficient to sustain a favorable application of Mitigating Condition 8(a).¹

¹Directive, Enclosure 2 ¶ 8(a): "the nature of the relationships with foreign persons . . . are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual . . . and the interests of the U.S."

In the whole-person analysis, the Judge noted evidence favorable to Applicant but concluded that this evidence was not sufficient to outweigh those factors that militated against approval of a clearance, citing explicitly to Applicant's over 10 years of foreign military service. She stated that there is no information about the nature of Applicant's duties while he was in the military, nor was there any information about the extent to which his wife and children maintain contact with his foreign in-laws.²

Discussion

Applicant challenges the Judge's findings of fact. Specifically, he argues that the Judge's finding that he had remained in the inactive reserves after his service as an officer was not true. We examine a Judge's findings to see if they are supported by substantial record evidence, that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.21. *See also* ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012).

In this case, the only evidence concerning this matter was supplied by Applicant himself. He stated in his security clearance application (SCA) that he had served as an officer in the Afghanistan military during a specified time between the early 1980s and the early 1990s. In reply to a question about the status of his service during the time he served, Applicant checked "Inactive Reserve." Item 4, SCA, dated March 21, 2011, at p. 15. In his reply to the SOR, Applicant stated that he had been a high-ranking officer in the military between two dates named in the SCA. However, he stated that, after the latter of the two dates, he left the service. The record evidence states only that, during the dates asserted by Applicant in the SCA and alleged in the SOR, he served as an officer in the inactive reserves of the military of Afghanistan. There is no evidence in the record of any further service after the dates given by Applicant in his SCA. Therefore, the Judge's finding that Applicant served as an officer until the early 1990s, after which he entered the inactive reserves, is in error. However, given her statement that there is no evidence as to what Applicant may have done while in the military, and given her findings about Applicant's in-laws in Afghanistan, it is not likely that, but for this error, she would have decided the case differently. Also, in the Analysis section of her Decision, the Judge makes reference to Applicant's 12 years of military service. This reference excludes any consideration of purported inactive reserve status after 1992. Therefore, the error is harmless.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. "There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 04-11577 at 4 (App. Bd. Feb. 7, 2007). "The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases." ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011). Prior lengthy service to a foreign government is also relevant. *See, e.g.*, ISCR Case No. 04-12449 at 5 (App. Bd. May 14, 2007). The decision is sustainable on this record. "The general standard is that a clearance may be

²See Directive, Enclosure 2 ¶ 8(c): "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation[.]"

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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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