

KEYWORD: Guideline C; Guideline B

DIGEST: The Appeal Board cannot consider new evidence. Neither can it consider the effect that an unfavorable decision may have on an applicant. A Judge must evaluate the evidence as a cumulative whole. Adverse decision affirmed.

CASE NO: 14-02496.a1

DATE: 05/14/2015

DATE: May 14, 2015

In Re:)	
)	
-----)	ADP Case No. 14-02496
)	
Applicant for Public Trust Position)	
)	

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 trustworthiness designation. On July 18, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness 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 March 13, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s request for a trustworthiness designation. 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. The Judge's favorable findings under Guideline C are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was born in Israel. He served in the Israeli Defense Forces (IDF) for four years. Applicant came to the U.S. in the late 1980s, where he received a bachelor's degree, and became a U.S. citizen in the mid-1990s. Applicant's wife is a native U.S. citizen, as are his three offspring. One of the children went to Israel at age 18, becoming an Israeli citizen and joining the IDF. This child, with whom Applicant maintains daily contact, is currently employed by the IDF.

Applicant's mother is a citizen and resident of Israel, as is his sibling, who retired after a career in the IDF. Applicant contacts his mother weekly and his sibling monthly. Applicant and his mother jointly own a bank account in Israel, worth about \$40,000. His joint ownership is to facilitate access in the event of an emergency involving his mother.

Applicant traveled to Israel to visit family seven times between 2003 and 2013. Each time he used an Israeli passport. Applicant surrendered his passport to his Facility Security Officer and obtained a letter from the Israeli Consul General's office permitting him to enter and exit Israel without it.

During his subject interview, Applicant stated that he would never relinquish Israeli citizenship and that he is an "Israeli first." Decision at 3. At the hearing he stated that he did not recall making that statement but did not deny that he had done so. A summary of Applicant's second interview shows that Applicant said that he holds no allegiance to one country over another and that his allegiance to Israel is such that he would give his life to protect that country.

Applicant enjoys an excellent reputation for trustworthiness and dependability. One witness, his rabbi, stated that Applicant's loyalty to the U.S. is unquestionable. Another witness provided a similar opinion.

Israel is a close ally of the U.S., and the U.S. is its largest trading partner. The two countries participate in joint military planning and training and have collaborated on military research and weapons development. Israel is a "major practitioner" of industrial espionage against the U.S. *Id.* at 4. The U.S. has disagreed with Israel about its sale of U.S. and Israeli technologies to other countries, such as China and Russia.

The Judge's Analysis

The Judge cleared Applicant of the Guideline C allegations. However, he reached the opposite conclusion under Guideline B. He noted that Guideline B concerns are not limited to those involving countries hostile to the U.S. He concluded that Applicant's Israeli family members, viewed alongside their military connections, raised a "heightened risk" of foreign exploitation as

well as a potential conflict of interest. In evaluating Applicant's case for mitigation, the Judge cited to Applicant's foreign relatives, two of whom have military connections, and to Israel's status as a collector of U.S. proprietary information. The Judge also noted Applicant's strong ties to Israel, concluding that Applicant's "divided allegiances" suggest that he would not necessarily resolve conflicts of interest in favor of the U.S.¹ *Id.* at 9. He concluded that Applicant had not rebutted the presumption that his contact with his foreign relatives is not casual. In the whole-person analysis, the Judge cited to evidence that Applicant has previously held public trust positions without incident. However, he concluded that Applicant had not met his burden of persuasion regarding the trustworthiness concerns raised under Guideline B.

Discussion

Applicant's brief makes assertions from outside the record, which we cannot consider. Directive ¶ E3.1.29. He argues that, without a trustworthiness designation, he will not have a job. We are not permitted to consider the impact that an adverse decision may have on an applicant. *See, e.g.,* ISCR Case No. 14-03497 at 3 (App. Bd. Mar. 9, 2015).

Applicant cites to evidence about his child who became an Israeli citizen, arguing that he has no control over this relative's actions. However, the Judge's decision does not rest solely or even primarily on this relative but on the totality of the evidence—Applicant's foreign relatives, their military connections, and official notice material about the geopolitical situation concerning Israel. Judges are required to consider the evidence as a cumulative whole in deciding whether the favorable evidence outweighs the unfavorable. *See, e.g.,* ADP Case No. 14-00860 at 2 (App. Bd. Mar. 12, 2015). The Decision in this case shows that the Judge complied with this requirement in reaching his ultimate conclusion. *See* ISCR Case No.13-00917 at 3 (App. Bd. Jul. 8, 2014); *see also* ADP Case No. 11-04085 at 2 (App. Bd. May 13, 2013) (The Judge analyzed the applicant's circumstances as a whole in concluding that he had not met his burden of persuasion as to mitigation). Applicant's argument is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.,* ADP Case No. 14-00700 at 2 (App. Bd. Sep. 24, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security.'" *See, e.g.,* ADP Case No. 12-04343 at 3 (App. Bd. May 21, 2013). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

¹*See* Directive, Enclosure 2 ¶ 6: "Foreign contacts and interests may be a . . . concern if the individual has divided loyalties . . . may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest."

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