

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant argues that the case should be remanded for the Judge to consider the imminent arrival of his parents in the US. Applicant has asked for a remedy not available to him. The Board is authorized to remand a case to correct identified error. A request to consider new evidence does not constitute the correction of an error. Absent a showing that an applicant was denied a reasonable opportunity to prepare for the hearing or was denied a reasonable opportunity to present evidence on his or her behalf, an applicant is not entitled to receive a new hearing just so the applicant can have another chance to present his or her case. Adverse decision affirmed.

CASENO: 14-03347.a1

DATE: 05/27/2016

DATE: May 27, 2016

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In Re:)	
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-----)	ISCR Case No. 14-03347
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)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Thomas G. Coale, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 28, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security 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 February 29, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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: (1) whether the Judge failed to appropriately consider a mitigating factor and (2) whether the Judge’s decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant was born and raised in Egypt. He received a bachelor’s degree from an Egyptian university. He entered the United States in 2000 and became a U.S. citizen in 2013. He has never been married and has no children. He earned a doctorate degree from a U.S. university. He was hired by his current employer, a federal contractor, in 2013.

Once Applicant became a U.S. citizen, he no longer used his Egyptian passport to travel. In 2014, he surrendered his Egyptian passport to his facility security officer with the understanding that it would not be returned to him. He also expressed a willingness to renounce his Egyptian citizenship.

Applicant’s parents are citizens and residents of Egypt. His parents are in their late 60s and he maintains regular contact with them. In 2015, Applicant submitted an application for his parents to become permanent residents of the United States. The application was accepted and was being processed. His sister is a student at a U.S. university and has applied to become a permanent resident of the United States.

Applicant claimed all of his financial interests are in the United States. After becoming a U.S. citizen, Applicant has had no contact with the Egyptian government. He stated that his allegiance is to the United States and that he has no allegiance to Egypt or any other foreign country.

Egypt is a key partner with the United States in ensuring regional stability in the Middle East. It has experienced political and social unrest. It is a potential operating environment for criminal and terrorist groups. Human rights abuses are rampant there.

The Judge's Analysis

The Judge concluded that Applicant mitigated the foreign preference concerns. He noted Applicant's sister was a citizen of Egypt even though she currently resides in the United States. The Judge concluded that, because Applicant had frequent contact and a close relationship with his parents, those contacts created a risk of foreign exploitation and a potential conflict of interest. The Judge remarked that Applicant presented little evidence about his parents' prior employment, their possible connections to the Egyptian government, their ownership of property in Egypt, and whether they were dependent on the Egyptian government for their support and medical care. He concluded that the record evidence failed to support a determination that Applicant's ties and sense of obligation to the United States are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States.

Discussion

Applicant contends that the Judge failed to consider properly Foreign Influence mitigating condition 8(a)¹ because his parents would be moving to the United States in the near future. At the time of the hearing, Applicant's parents had applied to become permanent residents of the United States.² No evidence was presented at the hearing to show their applications were approved or that they were moving to the United States. Information about them moving to the United States constitutes new evidence, which the Appeal Board cannot receive or consider. *See* Directive ¶ E3.1.29. Applicant also argues that the Judge had no basis to conclude that Applicant presents a security risk due to having family in Egypt. This argument essentially amounts to a disagreement with the Judge's weighing of the evidence, which is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06634 at 2 (App. Bd. Apr. 28, 2016).

Applicant further argues that the case should be remanded for the Judge to consider the imminent arrival of his parents in the United States. Applicant has asked for a remedy not available to him. The Appeal Board is authorized to remand a case to correct identified error. Directive ¶

¹ Directive, Enclosure 2 ¶ 8(a) states, "the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country 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, group, organization, or government and the interests of the United States."

² Applicant's Exhibits C and D reflected that applications were submitted for Applicant's parents to become permanent residents of the United States, but the applications were not complete. Applicant's parents were also pending an interview at the U.S. Embassy in Cairo. *See* the transcript at 22-23.

E3.1.33.2. A request to consider new evidence does not constitute the correction of an identified error. “It is well settled that ‘absent a showing that an applicant was denied a reasonable opportunity to prepare for the hearing or was denied a reasonable opportunity to present evidence on his or her behalf, an applicant is not entitled to receive a new hearing just so the applicant can have another chance to present his or her case.’” ADP Case No. 06-15508 at 2 (App. Bd. Sep. 21, 2007) (citing ISCR Case No. 04-01047 (App. Bd. Oct. 20, 2005)). *Compare* ISCR Case 00-0250 at 4 (App. Bd. Feb. 13, 2001) (“If the Board were to grant Applicant’s request for a new hearing or allow her to submit new evidence in this case, then the Board would be giving her special treatment and denying other, similarly-situated applicants of their right to receive the fair, impartial, and even-handed application of Executive Order 10865 and the Directive.”)

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. 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 Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board