

KEYWORD: Guideline B

DIGEST: The Judge’s decision is a recognition that, despite his connections within the U.S., Applicant could be tempted or pressured to compromise classified information. One circumstance is the presence of close family members in a country where terrorists operate. Another is family members who are well-known and through whom he could come to the attention of forces that seek U.S. national secrets. The Judge’s decision is not a determination that he has acted disloyally or that he is lacking in character. The concern is not necessarily that his relatives might act against the U.S. Rather, it is that they could come to the attention of forces within Yemen that are hostile to the U.S. or otherwise seek classified information and through them he could be subjected to coercion. Adverse decision affirmed.

CASENO: 14-06675.a1

DATE: 03/04/2016

DATE: March 4, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-06675
)	
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 March 23, 2015, 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 hearing. On December 23, 2015, 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 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 has worked for a Federal contractor since 2009. He was born in Yeman and came to the U.S. in the early 2000s. He became a U.S. citizen in the late 2000s. Applicant is married with two children. His wife and children are U.S. citizens by birth. While in Yeman, he was required to serve for one year in the military. Applicant avoided this responsibility by serving as an assistant to a relative who was a high ranking official in the Yemeni military. Registering under a military official's name was an acceptable way to avoid active service. Applicant's relative retired within the past few years.

As a student in the U.S., Applicant received aid through the Yemeni government. He received bachelor's and master's degrees, student loans for which he has repaid. Applicant has registered for the U.S. selective service.

Applicant's parents and siblings are citizens and residents of Yemen. His father is a well-known member of his profession, who is separated from Applicant's mother. Applicant speaks with his mother weekly and with his father every two or three months. One of Applicant's siblings works for a government agency that is involved in security matters. His also has an in-law who works for the Yemeni government.

Applicant has surrendered his Yemeni passport to his employer's security officer. He has not used it for foreign travel since becoming a U.S. citizen.

Applicant stated that his family was not close to the ongoing armed conflict in Yemen, although he later indicated that his mother heard airplane sounds and gunfire on a routine basis.

Applicant enjoys a good reputation for the quality of his work performance and has completed numerous professional development programs. He is thought of as a family man who

puts his children first. Applicant's supervisor and a former supervisor believe that he is worthy of a clearance. A co-worker describes him as honest and trustworthy.

The U.S. and Yemen have a strong partnership. However, terrorism and civil unrest are significant problems in Yemen, and, in January 2015, the President and cabinet resigned due to growing violence. A month later, the U.S. Embassy suspended operations in Sana'a, and the staff was temporarily relocated due to uncertainty caused by renewed violence.

The Judge's Analysis

In concluding that Applicant had not rebutted security concerns arising from his connections in Yemen, the Judge noted the presence of terrorist activity and civil unrest in that country. He stated that Yemen's unstable government and the presence within it of a violent insurgency made it conceivable that Applicant's family could be vulnerable to coercion. In addition, the Judge cited to evidence that Applicant has close contact with his parents and siblings in Yemen, that his father is well-known, and that a sibling works for a government agency. The Judge acknowledged Applicant's roots in the U.S. and his work history. However, he concluded that Applicant's family contacts in Yemen could create a conflict of interest.

Discussion

Applicant contends that the Judge's decision to deny him a clearance is a challenge to his loyalty. However, an adverse adjudication is in no sense a conclusion that an applicant is disloyal or unpatriotic. Rather, it is a determination in terms of national security. Directive, Enclosure 1, SECTION 7. *See also* ADP Case No. 14-06346 at 3 (App. Bd. Oct. 28, 2015). In a case such as the one before us, the Judge's adverse decision is a recognition that Applicant's circumstances are such that, despite his connections within the U.S., he could be tempted or pressured to compromise classified information. One such circumstance is the presence of close family members in a country where terrorists operate. *See, e.g.*, ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007). Another is family members who are well-known and through whom the applicant could come to the attention of forces that seek access to U.S. national secrets. *See, e.g.*, ISCR Case No. 14-03112 at 4 (App. Bd. Nov. 3, 2015). Accordingly, the Judge's decision is not a determination that Applicant has acted in a manner that shows disloyalty or that he is lacking in character. It is a recognition that even those who are patriotic and whose character has earned them high esteem could experience circumstances in which they could be tempted or pressured to help foreign relatives by compromising classified information.

Applicant cites to evidence about his family members in Yemen, his personal history, the nature of his contacts with his mother and others, the nature of the Yemeni government, and the civil unrest in that country.¹ He denies that his contacts with his mother and with other relatives poses

¹We note that the record in this case is not complete. Recently, we remanded a case where, as here, the record did not include documentary exhibits regarding the nature of the foreign country at issue. In the case before us, remand would serve no purpose. Applicant does not challenge most of the Judge's findings about Yemen. To the extent that

a danger to national security. He also denies that his relatives know anything about his job or that they could jeopardize the interests of the U.S. Again, however, the concern is not necessarily that Applicant's relatives might undertake actions that are hostile to the U.S. Rather, it is that they could foreseeably come to the attention of forces within Yemen that are hostile to the U.S. or that otherwise seek access to classified information and become a means through which Applicant could be subjected to coercion. Applicant's arguments are not sufficient to show that the Judge failed to consider all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). He has presented an alternative interpretation of the record, but that is not enough to show that the Judge weighed the evidence in as manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

Applicant notes that his continued employment requires a security clearance. The Directive does not permit us to consider the impact that an adverse decision might have upon an applicant. *See, e.g.*, ISCR Case No. 14-04202 at 4 (App. Bd. Dec. 24, 2015). Applicant's brief refers to matters that are not found in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. *See also* ISCR Case No. 14-03062 at 3 (App. Bd. Sep. 11, 2015).

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

he asks us to take notice of additional facts about that country, we conclude that even if such facts were supported by the missing exhibits they would not alter the outcome of the case.

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