

KEYWORD: Guideline B; Guideline J

DIGEST: In this case Applicant has served in the U.S. military in dangerous circumstances in Afghanistan and has risked his life to protect American personnel there. The Judge has articulated a detailed, rational explanation for her favorable determination. Favorable determination affirmed.

CASENO: 07-00034.a1

DATE: 02/05/2008

DATE: February 5, 2008

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 07-00034
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On January 8, 2007, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6

(Jan. 2, 1992), as amended (Directive). Applicant requested a decision on the written record. On September 6, 2007, after reviewing the record, Administrative Judge Mary E. Henry granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge's favorable clearance decision is arbitrary, capricious, or contrary to law.¹

Department Counsel argues that the judge erred by applying Foreign Influence Mitigating Conditions (FIMC) 8(a)² and 8(b)³ and by her failure to discuss the dangerous conditions in Afghanistan in her whole-person analysis.

The Judge found that Applicant has two children who are American citizens by birth. Applicant's mother and one brother are American citizens residing in the U.S. Applicant's sister is a citizen of and resides in Canada. Applicant has two brothers who are citizens of and reside in Afghanistan. Applicant maintains regular phone contact with those two brothers, who are auto parts salesmen. The Judge recognized the security significance of the presence of the two brothers in Afghanistan, but concluded that the concern was mitigated under FIMC 8(a). The Judge stated that the brothers have no ties to the Afghan government or to any non-governmental organization hostile to U.S. interests in Afghanistan, and when Applicant was in Afghanistan as a translator, the brothers helped recruit employees for the U.S. military. Decision at 8.

With regard to FIMC 8(b), Applicant stated that he was loyal to the U.S. and would do nothing to compromise U.S. interests. Generally, an Applicant's statements, by themselves, as to what he would do in the face of threats by a foreign government or entity are entitled to little weight. On the other hand, an applicant's proven record of action in defense of the U.S. is very important and can lead to a favorable result for an applicant in a Guideline B case. *See, e.g.*, ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). In this case, Applicant has served the U.S. military as a translator in dangerous circumstances in Afghanistan and has risked his life to protect American personnel there.

In her whole-person analysis, the Judge set out Applicant's ties to the U.S. Applicant has lived in the U.S. for more than 20 years and returned to Afghanistan only once, when necessitated by his job as a translator for the U.S. Army. Although he is separated from his wife, he maintains a close relationship with his children, who are U.S. citizens by birth. His mother lives in the U.S.

¹Department Counsel's appeal is limited to Guideline B.

²"[T]he nature of the relationships 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 U.S.;"

³"[T]here is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;"

The Judge acknowledged the dangerous conditions in Afghanistan. However, she pointed out that the Afghan government is moving forward with democracy and developing a rule of law, with the assistance of the U.S. There were no findings that the government of Afghanistan possesses an aggressive or hostile intelligence/security profile *vis-a-vis* the U.S., or is otherwise engaged in efforts to acquire classified or sensitive economic information from the U.S. *See, e.g.*, ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006).

The Judge emphasized the contribution Applicant has made in the War on Terrorism in Afghanistan. The record contains letters of recommendation from three Americans who have served in Afghanistan with Applicant. All attest to his integrity and his invaluable contribution to the American mission there. Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. Applicant participated in interrogations of the Anti-Coalition Militia (ACM) and gathered information from ACM detainees which developed a greater understanding of ACM activities to further support U.S. operations. Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.

Accordingly, in this case, the Judge has articulated a detailed, rational explanation for her favorable determination under the whole-person concept. The Board need not agree with the Judge's whole-person analysis to conclude that it is sustainable.

Order

The Judge's favorable security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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