

KEYWORD: Guideline C; Guideline B; Guideline L

DIGEST: The Judge found that Applicant was raised in Israel, served in the Israeli army and has numerous close relatives who are citizens and/or residents of Israel. He registered his U.S.-born children as Israeli citizens. He has held positions with the Israeli Embassy, has held an Israeli passport, and traveled on it after becoming a U.S. citizen. He has stated a willingness to renounce his Israeli citizenship. He has business contacts in Israel, some of whom have previously held positions in the Israeli government. Israel is a parliamentary democracy with close security and cultural ties to the U.S. It is also an active collector of proprietary information. Applicant has made contributions to the security of the United States. Applicant has failed to demonstrate that the Judge's material findings of security concern regarding Applicant's circumstances are not based upon substantial record evidence. On balance, the Judge's sustainable findings regarding Applicant's circumstances support his adverse decision. The Judge examined the relevant data and articulated a satisfactory explanation for the decision, including a rational connection between the facts found and the choice made. Adverse decision affirmed.

CASENO: 07-06767.a1

DATE: 05/19/2009

DATE: May 19, 2009

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| In Re: |) | |
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| |) | ISCR Case No. 07-06767 |
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| Applicant for Security Clearance |) | |
| |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Richard L. Moorhouse, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 31, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference), Guideline B (Foreign Influence) and Guideline L (Outside Activities) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 19, 2009, after the hearing, 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: whether certain of the Judge’s factual findings were based upon substantial record evidence; whether the Judge erred in his application of the pertinent mitigating conditions; and whether the Judge’s whole-person analysis was erroneous. Finding no harmful error, we affirm.

The Judge found, *inter alia*, that Applicant was born and raised in Israel. Applicant served 3 ½ years in the Israeli army. He became a U.S. citizen in the late 1990s. He has numerous close relatives who are citizens and/or residents of Israel. Applicant registered his U.S.-born children as Israeli citizens. In the past, he has held positions with the Israeli Embassy, has held an Israeli passport (surrendered in 2008), and has traveled on that passport after becoming a U.S. citizen. Applicant has stated a willingness to renounce his Israeli citizenship. He has substantial business contacts in Israel. Some of Applicant’s contacts in Israel have previously held positions in the Israeli government. Israel is a parliamentary democracy with close security and cultural ties to the U.S. It is also an active collector of proprietary information. Applicant has made contributions to the security of the United States.

The Board concludes that Applicant has failed to demonstrate that the Judge’s material findings of security concern regarding Applicant’s circumstances highlighted in the previous paragraph are not based upon substantial record evidence. On balance, the Judge’s sustainable findings regarding Applicant’s circumstances support his adverse decision. *See* Directive ¶ E3.1.32.1. (Substantial evidence 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.”) To the extent Applicant has demonstrated errors in the Judge’s findings of fact, such errors are ultimately harmless in that they would not be reasonably likely to change the outcome of the case.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s decision that “it is not clearly consistent with the national interest to grant Applicant’s security clearance” is sustainable on this record. Decision at 20. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security’”).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairman, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board