

KEYWORD: Guideline B

DIGEST: Applicant has a brother-in-law living in a country hostile to the U.S. and another on living in a country with an adversarial relationship with the U.S. Adverse decision affirmed.

CASENO: 09-08099.a1

DATE: 09/14/2012

DATE: September 14, 2012

In Re:)	
)	
-----)	ISCR Case No. 09-08099
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Paula W. Phinney, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 18, 2011, DOHA 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 decision on the written record. On June 28, 2012, after considering the record, Administrative Judge Philip S. Howe 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 the Judge failed to consider all of the relevant evidence and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant was born in Afghanistan, immigrating to the U.S. in the early 2000s. He became a U.S. citizen in the late 2000s, and he holds a U.S. passport. His wife was born in Afghanistan and became a naturalized U.S. citizen the same year as her husband. Applicant's parents are citizens and residents of Afghanistan. He has three siblings who became U.S. citizens in the late 2000s. His parents-in-law are citizens of Afghanistan who live in the U.S.

Applicant has a brother-in-law who lives in a country that is hostile to the U.S. He works for a state-run organization there. Applicant communicates with this relative more than 15 times a year by e-mail. He has another brother-in-law who lives in a country with an adversarial relationship with the U.S. Applicant communicates with this relative 8 to 15 times a year by e-mail. In addition, Applicant speaks with both on the telephone monthly.

Applicant enjoys an excellent reputation for the quality of his work performance. He earned numerous certificates of appreciation for his service to the U.S. His co-workers find him to be highly competent and trustworthy.

Afghanistan is a nation rife with corruption and has human rights issues. The Taliban finances its operations through criminal networks and narcotics cultivation.

In the Analysis, the Judge concluded that Applicant's connection with the brother-in-law who lives in the hostile country could place Applicant in a position of having to choose between his relationship with his in-law and the interests of the United States. He also concluded that Applicant could be confronted with a conflict of interest arising from his parents living in a country, Afghanistan, that has a "tenuous" security situation. Decision at 6-7. The Judge noted a paucity of record evidence concerning Applicant's assets in the U.S., and he concluded that Applicant's ties to the U.S. are not deep when compared with his ties to his foreign relatives. He also concluded that "it is not clearly evident . . . that [Applicant] will resolve any conflict of interest in favor of the United States." *Id.* The Judge noted Applicant's favorable character references, and he stated that Applicant has had no security breaches during his service. However, the Judge concluded that these favorable matters do not outweigh security concerns arising from Applicant's foreign relatives.

The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases. There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. An applicant with family members in a country

that is hostile to the U.S. bears a “very heavy burden” to show that the relatives are not a means of coercion or exploitation. *See, e.g.*, ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

Applicant contends that the Judge did not consider, or did not properly weigh, evidence favorable to Applicant, concerning, for example, his good work performance and his service to the U.S. overseas. He also draws attention to his clean disciplinary record. These are matters which the Judge was bound to consider, along with all the other evidence in the record. As stated above, the Judge made findings about the evidence which Applicant has cited and discussed that evidence in the Analysis. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge weighed the evidence in an improper manner. *See, e.g.*, ISCR Case No. 11-00281 at 3-4, (App. Bd. Nov. 25, 2011).

Applicant cites to other Hearing Office cases which, he argues, support his effort to be awarded a security clearance. We give these cases due consideration. However, Hearing Office decisions, as Applicant himself notes, are not binding on other Hearing Office Judge or on the Appeal Board. *See, e.g.*, ISCR Case No. 10-05738 at 3 (App. Bd. Jun. 26, 2012). Furthermore, Applicant has cited to evidence from outside the record, which we cannot consider. Directive ¶ E3.1.29.

The record supports a conclusion that 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 adverse 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 Judge’s adverse security clearance 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