

KEYWORD: Guideline B

DIGEST: The Judge discussed Applicant’s service in Afghanistan in the appropriate context. His conclusion that Applicant’s service did not outweigh the evidence of security concern was within his discretion. Adverse decision affirmed.

CASENO: 10-05329.a1

DATE: 10/17/2011

DATE: October 17, 2011

In Re:)	
)	
-----)	ISCR Case No. 10-05329
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Department Counsel

FOR APPLICANT

Leslie McAdoo Gordon, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 22, 2010, 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 hearing. On July 21, 2011, 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 the Judge erred in his weighing of evidence of Applicant's service in a war zone 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 is a linguist and cultural advisor working for a Government contractor in support of U.S. military forces deployed overseas. Applicant was born, raised, and educated in Afghanistan. In the early 1990s, Applicant traveled to another country to work for an agency providing relief to Afghanistan. He came to the U.S. to receive computer training. Due to threats to him lodged by a terrorist organization in the other country, Applicant was granted asylum in the U.S. for himself and his wife. He became a naturalized citizen in the late 2000s. In this country, he studied laboratory technology and subsequently worked at a large U.S. hospital.

Applicant's mother, numerous siblings, mother-in-law, and uncle are citizens and residents of Afghanistan. Before taking his current job, he had telephonic and e-mail contact with his mother and siblings two to three times a month. He visited his mother in 2005, when she had become ill. He also traveled to visit her in 2010, when she had again been hospitalized.

Applicant enjoys an excellent reputation for his work ethic, compliance with security rules, and his abilities as a linguist and cultural advisor.

Afghanistan has had a democratic government since 2004. However, terrorist forces within Afghanistan engage in activities such as bombings, suicide operations, assaults, and hostage taking. The risk of terrorist activity in Afghanistan is "extremely high." Decision at 4. Non-government organizations have been targeted, as have journalists, government workers, and U.N. workers.

In analyzing Applicant's circumstances, the Judge concluded that his contacts in Afghanistan "are not casual, infrequent, or minimal." Decision at 7. "The conduct of terrorists in Afghanistan makes it more likely that terrorists would attempt to coerce Applicant through his relatives living in Afghanistan, if they determined it was advantageous to do so." Decision at 9. He also noted record evidence that Applicant's father had been a high-ranking officer in the Afghan military and that he and his wife had been targeted by terrorists while living in the other country. The Judge also noted that Afghanistan is a country in which the U.S. is engaged in combat operations, although the exact nature and extent of his "high risk" circumstances is not evidenced in the record. In the whole-person analysis, the Judge reiterated his conclusions about the possibly precarious circumstances in Applicant's family in Afghanistan and the bearing of those circumstances on his susceptibility to coercion.

Applicant contends that the Judge did not properly analyze his evidence in mitigation. Specifically, he argues that the Judge failed to extend sufficiently favorable weight to evidence of Applicant's service to the U.S. in a dangerous part of the world. We have previously held that a prior history of compliance with security procedures and regulations is generally of low probative value. However, we have also found an exception in Guideline B cases in which applicants demonstrate that they have made significant contributions to national security in dangerous, high-risk circumstances. ISCR Case No. 06-25928 at 3-4 (App. Bd. Apr. 9, 2008). In this case, the Judge discussed Applicant's service in Afghanistan, where the U.S. is engaged in active military operations, and he did so in the explicit context of ISCR Case No. 06-25928, *supra*. His conclusion that the evidence regarding Applicant's service did not outweigh the evidence of concern was within his discretion. We find no basis to disturb the Judge's weighing of the evidence or to conclude that the Judge failed to consider all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-06691 at 3-4 (App. Bd. May 16, 2011).¹

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

¹Applicant asserts, and Department Counsel concedes, that the Judge made two errors in his findings of fact. After a review of the record and the Judge's Decision, the Board concludes that the errors were minor and did not affect the outcome of the case.

Member, Appeal Board

Signed: James E. Moody _____

James E. Moody

Administrative Judge

Member, Appeal Board