

KEYWORD: Guideline B; Guideline F

DIGEST: The Appeal Board cannot consider new evidence on appeal. Applicant’s contention that he has served the U.S. under high-risk circumstances lacked detail and was not corroborated. Adverse decision affirmed.

CASE NO: 11-06939.a1

DATE: 09/30/2013

DATE: September 30, 2013

)	
In Re:)	
)	
-----)	ISCR Case No. 11-06939
)	
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 January 8, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive).¹ Applicant requested that the case be decided on the written record. On August 2, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge

¹The Judge issued a formal finding favorable to Applicant on the single allegation brought under Guideline F. That favorable finding is not at issue on appeal.

Noreen A. Lynch denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found the following: Applicant is 43 years old and was born in Afghanistan. He came to the U.S. in the mid-1990's and became a naturalized U.S. citizen in the mid-2000's. Applicant is married to a woman who was born in Afghanistan, and is now a permanent resident in the United States. Applicant and his wife have three children. Two are permanent residents of the United States and one is a U.S. citizen.

Applicant's mother, four brothers, three sisters and his father-in-law are citizens and residents of Afghanistan. Applicant has frequent contacts with all of his first line family. Contact with his brothers is frequent at once a month. He contacts his sisters once every two months, and his father-in-law once every five months. Applicant has traveled to Afghanistan and during these visits he sees family members.

In the mid-1990's, the Taliban rose to power in Afghanistan largely due to the anarchy and warlordism that arose after the Soviet withdrawal. U.S. forces and a coalition partnership forced the Taliban out of power by November 2001. Despite progress made since the Taliban was deposed, Afghanistan still faces many daunting challenges. Among these challenges are defeating terrorists and insurgents, recovering from over three decades of civil strife, and rebuilding a shattered physical, economic, and political infrastructure. The Taliban, Al-Qa'ida, other insurgent groups, and anti-Coalition organizations continue to operate in Afghanistan, resulting in numerous attacks and deaths. At this time, the risk of terrorist activities remains extremely high. The country's human rights record remains poor and violence is rampant. The U.S. State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

The Judge concluded: Applicant admits that his mother, sisters, brothers and father-in-law are citizens and residents of Afghanistan. Applicant has frequent contact with them. Security concerns are raised in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his family members in Afghanistan. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Applicant did not present sufficient information to mitigate the security concerns given his relationships and frequency of contact with his relatives in Afghanistan. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation, pressure, or coercion is substantial. The complicated state of affairs in Afghanistan places a significant burden on Applicant to demonstrate that his foreign family members do not pose an unacceptable

security risk. Applicant has not presented detailed or sufficient information in this record to meet his burden to mitigate the security concern.

Applicant asserts that notwithstanding the Judge's finding that he has had close contact with his brothers, sisters and his mother who live in Afghanistan, he has had no contact with his brothers, sisters, father-in-law or mother since 2009. He states that he kept no contact with any foreign nationals including his family members, because he didn't want to jeopardize his security clearance. These assertions of fact are not contained in the record below. Therefore they constitute new evidence, which the Board cannot consider. *See* Directive ¶ E3.1.29. After a review of the evidence and the Judge's decision, the Board concludes that the Judge's findings concerning the nature of Applicant's contacts with relatives living in Afghanistan are reasonably supported by the record evidence.²

Applicant states that he feels he deserves a security clearance to continue serving his country. He states that he has been working with U.S. forces in Afghanistan for many years and traveled with U.S. troops on various military missions. The Board construes this portion of Applicant's brief as an assertion that he can be relied upon to recognize, resist, and report attempts at coercion or exploitation. The Board has recognized that in Guideline B cases where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security, such evidence is probative when evaluating whether or not an applicant has mitigated more immediate disqualifying conduct or circumstances. *See, e.g.,* ISCR Case No. 06-25928 at 3-4 (App. Bd. Apr. 9, 2008). Here, however, Applicant's assertion on appeal constitutes new evidence, inasmuch as no representations concerning his service are included in the record below. In any event, the statements lack detail concerning high-risk circumstances and are not independent evidence of Applicant's actions. Applicant's representations do not establish error on the part of the Judge.

The Board does not review a case *de novo*. After reviewing the record, the Board concludes 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

²Applicant did not provide any matters in response to the Government's File Of Relevant Material (FORM). His only input in this case was his answer to the SOR, wherein he did not discuss his relationship with his family members living in Afghanistan, nor did he offer any evidence regarding his frequency of contact with those relatives. Items 8 and 9 of the Government's FORM contain the only evidence of record concerning Applicant's frequency of contact with his foreign relatives. The Judge's findings are a reasonable interpretation of that evidence.

Order

The decision of the Judge 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