

KEYWORD: Guideline B

DIGEST: The Judge found that concerns arising from Applicant’s numerous siblings living in Iran had not been mitigated. Applicant’s numerous relatives who live in a country that is intensely hostile to the U.S. raised concerns that evidence of good duty performance could not mitigate. The Judge’s findings and conclusions are sustainable. Adverse decision affirmed.

CASE NO: 11-14079

DATE: 05/06/2013

DATE: May 6, 2013

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| In Re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 11-14079 |
|                                  | ) |                        |
| 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 August 22, 2012, DoD 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). Department Counsel requested a hearing. On March 14, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 lacked the requisite impartiality; whether Applicant was denied due process; whether the Judge failed to consider all of the record evidence; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant was born in Afghanistan. He immigrated to the U.S. in the late 1980s and became a citizen of this country a few years later. Applicant and his wife, a naturalized U.S. citizen, have two children born and raised in the U.S. Several of Applicant's siblings are Afghani citizens living in Iran. He has another sibling who is a resident of a European country. Applicant speaks with some of his relatives in Iran six to twelve times a year. Iran is virulently anti-American. It sponsors terrorism and is seeking to develop weapons of mass destruction. It employs torture and other abuses to instill fear among dissenters. Several U.S. citizens have been detained by the Iranian government and held without consular access.

### **The Judge's Analysis**

The Judge concluded that Applicant's circumstances raised Guideline B security concerns. He also concluded that concerns arising from two of Applicant's foreign relatives had been mitigated. However, the Judge found that concerns arising from Applicant's numerous siblings living in Iran had not been mitigated. The Judge acknowledged that Applicant had performed admirably during a previous job as an interpreter. He went on to state that Applicant's numerous relatives who live in a country that is intensely hostile to the U.S. raised concerns that evidence of good duty performance could not mitigate.

### **Discussion**

Applicant's brief states that there are many other applicants with circumstances similar to his who have been given clearances. He states that he does not understand why he has been singled out. We interpret the brief as contending that the Judge was biased. There is a rebuttable presumption that a Judge is unbiased, and a party seeking to rebut that presumption has a heavy burden on appeal. *See, e.g.*, ISCR Case No. 05-04923 at 2 (App. Bd. Apr. 24, 2007). We have examined the record, paying particular attention to the Judge's conduct of the hearing, and find no reason to conclude that the Judge lacked impartiality. He explained DOHA hearing procedures clearly and thoroughly, providing Applicant an opportunity to submit additional evidence after the hearing closed.<sup>1</sup> In addition, Applicant objected to some of the Government's proposed official

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<sup>1</sup>Applicant states that, prior to the hearing, Department Counsel advised him that no one receives a clearance without a recommendation from his or her employer. Applicant states that he expended time and effort to obtain letters of reference for inclusion in the record. His argument contains matters outside the record, which we generally are unable

notice documents, and the Judge sustained the objection as to three of them. Applicant has not rebutted the presumption that the Judge was impartial.

Applicant contends that he lacked both experience in administrative hearings and the money to hire a lawyer. He states that his case was not presented as clearly as it could have been. The record demonstrates that, both in pre-hearing guidance and at the beginning of the hearing, Applicant was advised of his right to hire an attorney. Applicant's decision to represent himself appears to have been knowing and voluntary. As stated above, Applicant submitted numerous post-hearing exhibits, and prevailed in a challenge to some of the official notice exhibits offered by the Government. Applicant has not cited to any additional evidence that he could have submitted nor demonstrated that his inexperience had a material impact on his case. Based on the record as a whole, we conclude that Applicant was not deprived of the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 08-09808 at 2 (App. Bd. Sep. 21, 2009).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. An applicant with family members in a hostile country has a "very heavy burden" to show that they are not a means of coercion or exploitation. *See, e.g.*, ISCR Case No. 10-09986 at (Dec. 15, 2011). The 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 Decision is **AFFIRMED**.

Signed: Michael Y. Ra'an

Michael Y. Ra'an  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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to consider. *See* Directive ¶ E3.1.29. However, we have examined such evidence when it raises issues of due process, etc. Applicant does not appear to be arguing that he was misled by Department Counsel or otherwise denied due process regarding this matter. Rather, the focus of his argument is his contention that the Judge did not consider his submissions. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-07104 at 3 (App. Bd. Feb. 25, 2013).

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board