

KEYWORD: Guideline C; Guideline B; Guideline F

DIGEST: The record contains substantial evidence of Foreign Preference security concerns. The record supports the Judge’s treatment of the mitigating conditions. Mere disagreement with a Judge’s weighing of the evidence or an ability to argue for an alternative interpretation of the evidence is not sufficient to demonstrate error. Adverse decision affirmed.

CASE NO: 12-06885.a1

DATE: 06/12/2013

DATE: September 12, 2013

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Fadi Boumitri, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 11, 2012, DoD 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 F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On May 30, 2013, after the hearing, Defense Office

of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe denied Applicant's request for a security clearance.<sup>1</sup> Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: (1) whether the Judge erred in concluding that Applicant engaged in security significant conduct under Guideline C; (2) whether the Judge erred in concluding that Applicant engaged in security significant conduct under Guideline B; and (3) whether the Judge erred in concluding that Guideline C and B mitigating conditions did not apply to the case. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.<sup>2</sup>

The Judge found the following pertinent facts: Applicant is 39 years old. His three children and his wife were all born in the United States and are U.S. citizens. Applicant has lived in the United States since the mid-1980's when he came to this country as a child. He became a naturalized U.S. citizen the same year. He was born in Lebanon. Applicant has two brothers and one sister. His sister was born in the United States. His two brothers came with him from Lebanon, never returned there, and are U.S. citizens. Applicant's father lives in the United States and is a dual U.S. and Lebanese citizen. His mother is deceased. Applicant's grandmother and aunt live in Lebanon. He talks to them monthly by telephone, and Applicant visited them during his 2009 and 2010 trips to Lebanon.

Applicant obtained a Lebanese passport in 2009. He used it instead of his U.S. passport for travel to Lebanon as using his U.S. passport would have required Applicant to purchase a visa for \$150.00. Applicant and his father went to Lebanon to visit relatives there. Applicant obtained a free airline ticket from a Lebanese political party. He voted in the Lebanese general election in return for his airline ticket. He described the political party he voted for, but did not know its platform or policies before voting. The Lebanese passport was valid for one year. Applicant surrendered it to his company's security office recently. Applicant went to Lebanon in 2010 on vacation.

Applicant testified he would travel to Lebanon again to vacation there. He also stated he would vote in future Lebanese elections. Applicant considers himself a dual citizen of the United States and Lebanon because of his birth in Lebanon. If he could legally renounce his Lebanese citizenship, he would do so.

Lebanon is a parliamentary democracy. Its foreign policy is heavily influenced by neighboring Syria, which has long influenced Lebanon's internal policies as well. Syria maintains some influence in Lebanon. The U.S. State Department has declared Syria to be a supporter of terrorism. The United States seeks to maintain its traditionally close ties with Lebanon. Although Lebanon is a parliamentary republic, it has some human rights problems.

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<sup>1</sup>In his answer to the SOR, Applicant indicated his desire to have the case decided on the written record. Nothing in the case file indicates which party requested a hearing.

<sup>2</sup>The Judge made formal findings favorable to Applicant under Guideline F. Those findings are not at issue on appeal.

Hezbollah is a Lebanese-based radical Shia group which takes its ideological inspiration from the Iranian revolution. It is a U.S.-designated foreign terrorist organization and is described by the U.S. State Department as the most technically capable terrorist group in the world. The Lebanese government recognizes Hezbollah as a legitimate resistance group and political party, and until recently, Hezbollah was represented by elected members of the Lebanese Parliament and on Lebanon's cabinet. Hezbollah is closely allied with Iran and often acts on at its behest. It has helped Syria advance its political objectives in the region.

Americans have been the targets of numerous terrorist attacks in Lebanon, and the perpetrators of many of those attacks are still present in Lebanon and retain the ability to act. Palestinian groups hostile to the Lebanese government and the United States operate largely autonomously inside refugee camps in different areas of Lebanon. The U.S. State Department continues to urge that Americans avoid all travel to Lebanon. There have been cases involving the attempted legal export of U.S. restricted, dual use technology to Hezbollah.

The Judge concluded: Applicant accepted a plane ticket from a Lebanese political party whose policies he did not know before voting for them. He stated he would vote again in a Lebanese election. Applicant obtained a Lebanese passport to enter Lebanon because it was cheaper than paying for a visa to use with his U.S. passport. He performed these actions after obtaining U.S. citizenship in 1986. Applicant's actions to obtain a Lebanese passport were done as part of his effort to obtain recognition of his Lebanese citizenship by the Lebanese government which would issue such a passport only to persons who were citizens of Lebanon. These actions raise security concerns under Guideline C.

Regarding mitigation, Applicant's Lebanese citizenship derives from his birth in Lebanon and his parent's citizenship. AG ¶ 11(a)<sup>3</sup> does not apply because subsequent to obtaining his U.S. citizenship Applicant voted in a Lebanese election in return for a plane ticket. AG ¶ 11(b)<sup>4</sup> does not apply because he has not taken any steps to attempt, as a minimum, to renounce his Lebanese citizenship. Instead, Applicant obtained a Lebanese passport to avoid paying \$150.00 in visa fees. Applicant's Lebanese passport is in the possession of his employer's security office. AG ¶ 11(e)<sup>5</sup> might have applied. However, the security concern raised by voting and his statement that he would go to Lebanon and vote again does not mitigate the Foreign Preference security concern.

Regarding Guideline B, Applicant has a grandmother and aunt living in Lebanon. He also has a father who lives in the U.S. but has dual U.S. and Lebanese citizenship. Applicant contacts his aunt and grandmother monthly by telephone. That contact and his association with them during his 2009 and 2010 visits, plus his vote in the Lebanese election create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. Lebanon is a country in which the

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<sup>3</sup>“[D]ual citizenship is based solely on parents' citizenship or birth in a foreign country[.]”

<sup>4</sup>“[T]he individual has expressed a willingness to renounce dual citizenship[.]”

<sup>5</sup>“[T]he passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated[.]”

terrorist organization Hezbollah has a governmental position. Applicant's vote in 2009 in Lebanon, and his stated desire to return to Lebanon to vote and vacation in the future make him vulnerable to exploitation, pressure, or coercion by a foreign person, group, government or country. Applicant's connections through his family and his own interest in returning to Lebanon increase his vulnerability. These elements raise security concerns.

Regarding Guideline B mitigating conditions, Applicant's grandmother and aunt are over 60 years old and they are not in any government position in Lebanon. It is very unlikely that Applicant, who is currently unemployed and a mechanic in previous positions, will be placed in a position to choose between the interests of Hezbollah or its allies, or the Lebanese government, and the interests of the U.S. government. AG ¶ 8(a)<sup>6</sup> applies. Applicant's connections to the United States are stronger than any shown to Lebanon. However, Applicant demonstrated an obligation to a foreign group or government when he accepted the plane ticket in 2009 and voted in the Lebanese general election. His expressed intention to vote again in a Lebanese election is of particular security concern. Applicant may not resolve any such conflicts in favor of the United States. AG ¶ 8(b)<sup>7</sup> does not apply.

Under the whole-person concept, Applicant clearly demonstrated the influence Lebanon and his father have on him and the preference by obtaining a Lebanese passport and voting for a foreign political party in a country where there is a significant terrorist threat. Applicant did not mitigate Foreign Influence or Foreign Preference security concerns.

Applicant argues that obtaining a Lebanese passport and voting in a Lebanese election, whether considered separately or in conjunction with one another do not show a preference for Lebanon over the United States. However, these actions by Applicant, taken after he obtained U.S. citizenship, are clearly enumerated by the Directive as exercises in the rights, privileges, or obligations of foreign citizenship. As such, they raise the issue of foreign preference. The Board has examined the record evidence and has reviewed the Judge's findings and analysis. We determine that substantial record evidence exists to support the Judge's conclusions that foreign preference security concerns were raised by Applicant's actions.

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<sup>6</sup>“[T]he nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.[.]”

<sup>7</sup>“[T]here is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest[.]”

Applicant asserts that his vote in a Lebanese election did not indicate a foreign preference because he voted for a political party that was pro-western and pro-United States.<sup>8</sup> Similarly, he asserts that he obtained a Lebanese passport for financial reasons in order to avoid paying a \$150 visa fee. These facts do not undercut the security significance of Applicant's actions. The absence of sinister motives did not reduce the negative security implications of Applicant's decision to vote in a foreign election. *See*, ISCR Case No. 99-0254 at 3-4 (App. Bd. Feb. 16, 2000). The fact that Applicant indicated that he was motivated by personal financial interests to obtain a Lebanese passport does not negate or diminish the security significance of his action. *Id.*

Applicant states that the Judge erred by specifically naming his willingness to vote in Lebanese elections in the future as a reason for denying him a security clearance. After a review of the Judge's decision, the Board concludes that nowhere does the Judge single out this fact as a sole or independent reason for denying him a clearance, although the Judge's decision indicates that he considers it an important aspect of the case. Applicant contends that his willingness to vote in future Lebanese elections is driven by his desire to promote western and U.S. policies. Again, Applicant's motivations regarding future voting do not detract from the security significance of his willingness to vote in foreign elections.

Applicant argues that Guideline C mitigating conditions ¶ 11(b), ¶ 11 (e), and ¶ 11(f)<sup>9</sup> apply to mitigate foreign preference concerns, and that the Judge erred by not so concluding. Regarding AG ¶ 11(b), the Judge acknowledged that Applicant testified he would renounce his Lebanese citizenship if he thought he could do so under Lebanese law. However, the Judge concluded that AG ¶ 11(b) did not apply because, instead of taking steps to renounce his Lebanese citizenship, Applicant engaged in the acts of obtaining a Lebanese passport and voting in a Lebanese national election. This conclusion was reasonable and was supported by record evidence. Regarding AG ¶ 11(e), the Judge noted that Applicant turned in his Lebanese passport to his employer's security office, an action that might make the mitigating condition applicable but for the fact that Applicant voted in a Lebanese election and stated his willingness to vote in the future. This conclusion was also reasonable. Concerning AG ¶ 11(f), Applicant argues that since the U.S. government supported free and independent elections in Lebanon and is committed to support the Lebanese people in their goal of a fully sovereign democratic state, that Applicant's vote in the Lebanese election for a party that supports U.S. interests was encouraged by the United States, thus making the mitigating condition applicable. There was no evidence in this record that would compel a Judge to apply AG ¶ 11(f).

The Judge found that Guideline C mitigating condition ¶ 11(a) does not apply. Applicant argues this is error. The Judge found that Applicant was born in Lebanon and that his Lebanese

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<sup>8</sup>Applicant challenges the Judge's finding that Applicant voted for a Lebanese political party without any knowledge of its policies or platform. The record indicates that Applicant was at least aware that the party in question was pro-western and pro-United States. Thus, the Judge's finding was in error. However, the error is harmless inasmuch as the extent of Applicant's knowledge of foreign election issues does not significantly affect the security significance of the act of voting in a foreign election.

<sup>9</sup>“[T]he vote in a foreign election was encouraged by the United States Government.”

citizenship derives from his birth in Lebanon and his parent's citizenship. The Board has concluded that AG ¶ 11(a) can be applied where an applicant's dual citizenship falls within the literal language of that mitigating condition, regardless of whether the applicant exercised the rights or privileges of foreign citizenship. *See, e.g.*, ISCR Case No. 03-23806 at 5-6 (App. Bd. Apr. 28, 2005). Given the Judge's finding, Applicant was entitled to have the Judge apply AG ¶ 11(a). However, application of that mitigating condition does not determine the outcome of the case. The mere presence or absence of any given Adjudicative Guideline disqualifying or mitigating condition is not solely dispositive of a case. *See, e.g.*, ISCR Case No. 99-0109 at 5 (App. Bd. Mar. 1, 2000). The applicability of AG ¶ 11(a) does not render irrelevant any other record evidence that might be indicative of a foreign preference under Guideline C. The Judge found that Applicant had engaged in the exercise of various rights and privileges of Lebanese citizenship and concluded that such exercise raised security concerns that had not been mitigated. Those findings and conclusions are sustainable. Thus, the record evidence provides a sufficient basis for the Board to affirm the Judge's adverse security clearance decision notwithstanding the applicability of AG ¶ 11(a).

Regarding Guideline B, Applicant argues that the Judge erred by not applying two mitigating conditions, AG ¶ 8(b) and AG ¶ 8(c)<sup>10</sup> After a review of the record evidence, the Board concludes that the Judge was not required to apply these two mitigating conditions, and he had a rational basis for reaching conclusions under Guideline B that were adverse to Applicant. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Here, Applicant is essentially arguing in support of his version of the record evidence. The record supports the Judge's conclusion that Applicant's family ties to Lebanon, when considered in the context of his exercise of Lebanese citizenship under Guideline C, create unmitigated security concerns.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). 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.

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<sup>10</sup> "[C]ontact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation[.]"

**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