

KEYWORD: Guideline B; Guideline F

DIGEST: The fact that a decision was adverse to Applicant is not sufficient to demonstrate bias or error. Adverse decision affirmed

CASENO: 12-09329.a1

DATE: 03/18/2013

DATE: March 18, 2013

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In Re:)	
)	
-----)	ISCR Case No. 12-09329
)	
)	
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 16, 2012, 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). Applicant requested a hearing. On January 16, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White 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 mis-weighed the evidence; whether the Judge failed to consider all of the evidence; and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings

The Judge found that Applicant works for a Defense contractor. Born in Afghanistan, he came to the U.S. to obtain an education. He became a U.S. citizen in the mid-1990s. Although he loves Afghanistan and has family there for whom he cares, he intends to stay in the U.S.

His mother, who is in her late 70s, lives with one of Applicant’s siblings on a farm in Afghanistan. Applicant’s father bequeathed this farm to his offspring, and Applicant estimates its worth at \$25,000. He has three other siblings in Afghanistan and has a close relationship with one of them. Applicant’s wife has a mother and five siblings in Afghanistan, and she contacts them regularly.

Applicant enjoys an excellent reputation for the quality of his duty performance, his dedication to mission accomplishment, and his character. He has served in Afghanistan, primarily on U.S. bases there, though he has gone into the field and, upon two occasions, was present in a battlefield area.

Afghanistan has a poor human rights record, endemic corruption, and is a place where terrorist groups such as Al Quaida are found. These terrorist groups openly attack local authorities as well as U.S. personnel and interests.

The Judge’s Analysis

As stated above, the Judge resolved the Guideline F allegation in Applicant’s favor. However, he concluded that Applicant’s family connections within Afghanistan raised security concerns under Guideline B that Applicant had failed to mitigate. He noted Applicant’s evidence that he regularly communicates with one of his siblings in Afghanistan and stated that Applicant’s relationship with his other relatives is “significant.” Decision at 6. The Judge concluded that Applicant had failed to establish mitigating conditions 8(a)¹ and (c).²

¹Directive, Enclosure 2 ¶ 8(a): “the nature of the relationships with the 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,

The Judge also concluded that Applicant's interest in the family farm is of importance to him and noted that Applicant shares living quarters with several other Afghani citizens. The Judge cited to evidence that Applicant had recently sought employment in Afghanistan. Considering the totality of Applicant's circumstances, the Judge concluded that Applicant had not demonstrated that his ties within the U.S. outweigh those in Afghanistan. The Judge concluded that Applicant had failed to establish mitigating conditions 8(b)³ and (f)⁴.

In the whole-person analysis, the Judge stated that it is foreseeable that Applicant could be forced to choose between the interests of the U.S. and those of his foreign relatives, which is an eventuality to be avoided under the Directive. He concluded that Applicant had failed to show that this potential had been diminished to any extent. Although the Judge commended Applicant for his service to the U.S. under difficult circumstances, he concluded that the circumstances of this case do not justify placing Applicant or his family at risk of exploitation.

Discussion

Applicant cites to record evidence of his good character, his clean disciplinary record, and his service to the U.S. in a combat zone. He also argues that the Judge had not properly weighed the evidence of his relationship with his sibling and the extent of his contacts with his mother and his sibling. We have examined the Judge's Decision in light of the record and find no reason to believe that he weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. Among other things, we note Applicant's own testimony that he contacts his sibling "maybe every other week or so," (Tr. at 70), which supports the Judge's conclusion that his contact with his foreign family is neither casual nor infrequent. Moreover, Applicant has failed to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-02311 at 4 (App. Bd. Nov. 26, 2012).

Applicant contends that his hearing was unfair. However, he points to nothing in the record that would lead a reasonable person to conclude that he was denied the due process afforded him by the Directive. Applicant appears to base this argument on the fact that the Judge issued an adverse decision, which in and of itself is not sufficient to establish error. *See, e.g.*, ISCR Case No.

organization, or government and the interests of the U.S[.]”

²Directive, Enclosure 2 ¶ 8(c): “contact 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[.]”

³Directive, Enclosure 2 ¶ 8(b): “there 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[.]”

⁴Directive, Enclosure 2 ¶ 8(f) “the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.”

08-03233 at 3 (App. Bd. Aug. 7, 2009), in which we held that an adverse decision alone was not sufficient to show that the Judge was biased against the applicant.

Given the Judge’s findings about (1) the extent of Applicant’s family connections in Afghanistan and (2) the presence of terrorist groups in that country, we find no error in his treatment of the mitigating conditions. *See, e.g.*, ISCR Case No. 09-08099 at 2 (App. Bd. Sep. 14, 2012) (The presence of terrorist activity in a foreign country is a significant factor in Foreign Influence cases). 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 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