

KEYWORD: Guideline B; Guideline C

DIGEST: Applicant’s initial statement to an investigator in which he professed greater allegiance to Afghanistan than the United States and his relationship with his elderly brother living in Afghanistan support the Judge’s ultimate unfavorable security clearance determination. Adverse decision affirmed.

CASE NO: 12-09446.a1

DATE: 06/14/2013

DATE: June 14, 2013

In Re:	)	
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-----	)	ISCR Case No. 12-09446
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

-----, Personal Representative

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 9, 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 C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive).

Applicant requested that the case be decided on the written record. On February 15, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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: Applicant is 70 years old. He was born in Afghanistan and attended high school and a university there. He served in the Afghan army for one year. He worked for an Afghan governmental agency for a number of years. He left Afghanistan and resided in Pakistan for a few years until he came to the United States in 1992. He became a naturalized U.S. citizen in 2001. He has a U.S. passport. Applicant has two brothers and one sister. One brother remains a citizen and resident of Afghanistan. Applicant communicates with him yearly.

An investigator interviewed Applicant regarding information on his security clearance application. He asked Applicant, "Is there any country that you feel more loyal to or like more than the U.S.?" In response, Applicant said, "Oh no I like MY [sic] country Afghanistan. I would say Afghanistan and then United States." In his response to the government's documentary evidence, Applicant wrote that "I admit that I love U.S.A., my second country more than Afghanistan." Applicant told the investigator that he wants to return to Afghanistan "to help improve Afghanistan, second to support HIMSELF [sic] and third help the U.S. Mission." Applicant also told the investigator that he was very home sick for Afghanistan.

At this time, the risk of terrorist activities in Afghanistan remains extremely high. The country's human rights record remains poor and violence is rampant. Insurgents continue to plan attacks and kidnappings of Americans and other Western nationals. The United States' extraordinary commitment to Afghanistan is balanced against the inherent dangers of the ongoing conflict in Afghanistan to citizens and residents of Afghanistan and Afghan Government problems developing and complying with the rule of law.

The Judge concluded: Under Guideline B, Applicant's relationship with his elderly brother living in Afghanistan creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist a family member in Afghanistan by providing sensitive or classified information. Applicant has failed to provide sufficient evidence to fully meet his burden of showing there is "little likelihood that his relationships with his relatives who are Afghanistan citizens could create a risk for foreign influence or exploitation." Applicant failed to present sufficient credible evidence to demonstrate that "he has enough loyalties to this country" to mitigate the presence of his brother in Afghanistan and to outweigh his feelings of sympathy and connections to his place of birth. Under Guideline C, Applicant's initial statement to the investigator in which he professed greater allegiance to Afghanistan than the United States is not controverted by his subsequent written statement in his response to the government's evidence. No mitigating conditions are sufficient to mitigate the security concerns raised under this guideline. The record evidence does not outweigh Applicant's assertions of strong allegiance to Afghanistan.

On appeal, Applicant argues that he loves the United States, and has loved it since his first day here. He asserts that his loyalty and love is only for the United States, and that the unfavorable security clearance decision is unfair. He professes a desire to continue serving the United States. The Board interprets these arguments as an assertion that the Judge's findings and conclusions as to Applicant's preference for Afghanistan are not supported by the record. We have examined the Judge's Decision in light of the record and find no reason to believe that she weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. We conclude that the Judge's material findings of security concern are supported by substantial record evidence. Applicant has not demonstrated that the Judge's findings contain any harmful error. *See, e.g.*, ISCR Case No. 11-08844 at 3-4 (App. Bd. Jan. 10, 2013). Moreover, Applicant does not challenge the Judge's unfavorable findings and conclusions under Guideline B.

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.

### **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