

KEYWORD: Guideline B

DIGEST: The Jude error regarding Applicant's sibling is ultimately harmless in the context of the overall decision. Adverse decision affirmed.

CASENO: 13-00375.a1

DATE: 03/28/2014

DATE: March 28, 2014

In Re:)
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 -----) ISCR Case No. 13-00375
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)
 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 1, 2013, 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). Applicant requested a decision on the written record. On January 23, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe 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's findings of fact contained errors 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 came to the U.S. in the late 1980s and was naturalized a U.S. citizen in the mid-1990s. He works for a Defense contractor. He is married and has four children. His wife and children are all U.S. citizens, either by birth or by naturalization.

Applicant has three living siblings, all of whom are citizens and residents of Afghanistan. The SOR alleged that two siblings live in Afghanistan, but Applicant's security clearance application (SCA) lists three. He also has a sibling-in-law who is a citizen and resident of that country. He speaks with his Afghan siblings every two months.

Applicant enjoys an excellent reputation for his duty performance, integrity, and hard work. He submitted six certificates of service and/or appreciation from military organizations for his work in support of U.S. interests.

Although Afghanistan has a democratic government, terrorists operate and assert power within its borders. It has a poor human rights record. Insurgents plan attacks and kidnappings of Americans and other Western nationals. No section of Afghanistan is immune from violence.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raise security concerns under Guideline B, in that the Afghan residence of his siblings and sibling-in-law create a heightened risk that, through them, he could be subjected to coercion or duress if they became targets of terrorist activity. In concluding that Applicant had failed to mitigate these concerns, the Judge stated that Applicant could foreseeably be placed in a position of having to choose between the interests of his relatives and those of the U.S. Although he noted evidence that Applicant's wife and children live with him in the U.S., he stated that there was no evidence in the record of other connections within this country to counterbalance his familial ties within Afghanistan. He also stated that Applicant's contact with his foreign relatives is neither casual or infrequent. In the whole person analysis, the Judge noted the risk of terrorism in Afghanistan, stating that terrorists could attempt to use Applicant's relatives to obtain classified information.

Discussion

Applicant contends that the Judge erred in stating that he had three siblings living in Afghanistan, asserting that the evidence shows that he has only two in that country, plus his in-law. We examine a Judge’s findings to see if they are supported by substantial record evidence, that is, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” *See* ISCR Case No. 10-06089 at 2 (App. Bd. Sep. 11, 2013), quoting Directive ¶ E3.1.32.1. In this case, Applicant’s argument is persuasive. His SCA lists three siblings, but one of them lives in a European country. The SCA, and other record evidence, list only two siblings who are citizens and residents of Afghanistan. This finding, therefore, is erroneous. However, even if the Judge had not made this error, it is not likely that his overall decision would have been different. Therefore, this error is harmless.

Applicant cites to favorable evidence, such as the letters of recommendation he submitted. The Judge made findings about Applicant’s favorable evidence and discussed it in his analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-01977 at 2 (App. Bd. Dec. 30, 2013). The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases. *See, e.g.*, ISCR Case No. 12-12172 at 4 (App. Bd. Jan. 9, 2014). There is a rebuttable presumption that a person has ties of obligation or affection to foreign in-laws. *See, e.g.*, ISCR Case No. 10-07436 at 6 (App. Bd. Oct. 19, 2011). “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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board