

KEYWORD: Guideline C

DIGEST: There is a presumption of good faith and regularity on the part of DOHA judges as they decide cases. Adverse decision affirmed.

CASENO: 14-02025.a1

DATE: 05/12/2015

DATE: May 12, 2015

In Re:)
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-----) ISCR Case No. 14-02025
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)
Applicant for Security Clearance)
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)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Personal Representative (Redacted)

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 11, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision—security concerns raised under 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 12, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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 was arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge made the following findings: Applicant immigrated to the United States from Scotland in 1965. He enlisted in the United States Air Force and served honorably for 20 years. He became a naturalized U.S. citizen in 1986. He is a dual national of the United States and the United Kingdom. In 2009 he renewed his expired British passport. Applicant avers that he would only use his British passport should an emergency arise while his daughter is in Scotland as he wants to be able to get to her as quickly and as efficiently as possible. In his response to the government’s File of Relevant Material, he states that he has no intention of using the passport. Applicant’s British passport expires in 2019.

The Judge reached the following conclusions: Where an individual has expressed a willingness to renounce dual citizenship, that factor is mitigating. However, Applicant expressed no such willingness. The destruction of a foreign passport, or surrendering it to a cognizant security authority or otherwise invalidating it is also mitigating. Applicant has expressed no such willingness to destroy, surrender, or invalidate his British passport. The record evidence establishes doubts as to Applicant’s eligibility and suitability for a security clearance.

Applicant argues that the Judge did not adequately address the whole-person factors listed in the Directive, and did not consider a number of factors in Applicant’s background other than his 20 years of U.S. military service, such as his continued service to the U.S. government after military retirement, the fact that his wife and daughter were born in the United States, and the fact that Applicant is a citizen of Scotland by birth only. Applicant fails to establish error on the part of the Judge.

There is a presumption in favor of regularity and good faith on the part of DOHA judges as they engage in the process of deciding cases. *See, e.g.*, ISCR Case No. 99-0019 at 5 (App. Bd. Nov. 22, 1999). Moreover, the Judge specifically listed the nine general adjudicative factors listed at ¶ 2(a) of the Directive in his decision. He was not required to apply specifically each factor to the facts of the case. There is also a presumption that the Judge has considered all the evidence in the record unless he specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb 20, 2009). The Board finds no reason to believe that the Judge did not properly weigh the evidence or that he failed to consider all the evidence of record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012). Contrary to Applicant’s argument on appeal, his possession of a foreign passport is an exercise of foreign citizenship. *See* Directive, Enclosure 2, ¶ 10(a)(1).

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 Ra'anan
Michael 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