

KEYWORD: Guideline C; Guideline B

DIGEST: There is a rational connection between an applicant’s family ties in a country whose interests are adverse to the United States and the risk that the applicant might fail to protect and safeguard classified information. Adverse decision affirmed.

CASENO: 15-00647.a1

DATE: 06/01/2017

DATE: June 1, 2017

In Re:))	
-----))	ISCR Case No. 15-00647
))	
Applicant for Security Clearance))	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Bradley J. Haddy, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 27, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) and 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 February 27, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Thomas M. Crean 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 Applicant was denied due process; whether the Judge erred in concluding that her circumstances raised security concerns; 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 Iran, coming to the U.S. in the early 1980s, where she attended college. She became a U.S. citizen in the early 2000s. She has worked for a Defense contractor since 2008. Applicant's husband and her children were born in Iran, but they are now U.S. citizens.

Applicant received a U.S. passport shortly after she became a U.S. citizen. She also has an Iranian passport that was last renewed about five years ago. Applicant made four trips to Iran between 2000 and 2012, each time using her Iranian passport. She maintains Iranian citizenship and the passport to facilitate entry into Iran.

Applicant's parents and four siblings are citizens and residents of Iran. Applicant's father retired from the Iranian military. She contacts her parents about once a month. One of Applicant's siblings is retired from a job with an agency of the Iranian government, and another retired from the Iranian military. She speaks with them about once a year. In addition, Applicant's husband has a friend who is a citizen and resident of Iran. She and her husband contact the friend by telephone two or three times a year and visit this person when they travel to Iran.

Iran is a country that has been hostile to the U.S. since the revolution of 1979. It supports terrorist groups, and its human rights practices are of concern to the U.S. The Judge stated that Iran's interests are inimical to those of the U.S.

The Judge's Analysis

The Judge cited to evidence that Applicant has close relatives as well as a friend in a hostile country with whom she communicates regularly. He concluded that this evidence shows a heightened risk that Applicant could be subjected to coercion or be placed in a conflict of interest. He also concluded that Applicant's travels to Iran and her use of an Iranian passport raise concerns under Guideline C, in that use of a foreign passport constitutes an exercise of a foreign right or privilege.

The Judge concluded that Applicant's evidence did not mitigate the concerns raised by her passport and her Iranian relatives. He observed that there is a presumption that a person has ties of affection and obligation to immediate family members. He stated that the facts of this case show that Applicant is close to her Iranian relatives and communicates with them regularly. He concluded that the evidence she had submitted was not sufficient to outweigh the chance that her relatives and friend could become a means through which she may be subjected to pressure or coercion. Concerning her passport, the Judge cited to evidence that Applicant, her husband, and her children all possess Iranian passports in order to enter and exit Iran. He concluded that Applicant had not mitigated the Guideline B or Guideline C concerns raised by the SOR and evidenced by the record.

Discussion

Applicant's appeal brief includes reference to matters not contained in the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant argues that it is not clear that her decision to represent herself was knowing and intelligent. We note that the File of Relevant Material (FORM) was accompanied by a cover letter from DOHA administrative personnel. This letter notified her of her right to respond to the FORM. It also contained the following language:

Although it is not required that you be represented or assisted by an attorney to prepare your response to the Government's file of relevant material, you have the right to be represented by counsel, and your careful attention to this matter is important, since any determination that may be made by the Administrative Judge to deny or revoke your security clearance will be reported to your employer and could affect your current employment and your future employability.

In addition, Applicant received a copy of the Directive with the SOR and another with the FORM. The Directive spells out the rights an applicant enjoys at a DOHA proceeding, including the right to counsel.¹ We find no reason to believe that Applicant was denied adequate notice of her right to counsel. As the Judge found, she has lived in the U.S. for decades and has attended college in this country, which would indicate a sufficient facility in the English language to enable her to have understood the material she received explaining her rights. Applicant was not denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 15-04472 at 3 (App. Bd. Feb. 9, 2017).

Applicant argues that her circumstances do not raise security concerns. We note first of all that the Directive presumes that there is a nexus, or rational connection, between admitted or proved facts under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 15-02903 at 2 (App. Bd. Mar. 9, 2017). Applicant admitted each of the SOR allegations, which alone would give rise to the presumption. In addition, the Government submitted substantial evidence and official notice documents that establish the essential facts in this case.

These facts must be understood in light of law and policy governing the security significance of an applicant's connections in and with a foreign country. Regarding Guideline B, the nature of the foreign government involved, its human rights record, and the presence of terrorist activity are important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. There is a rational connection between an applicant's family ties in a country whose interests are adverse to the United States and the risk that the applicant might fail to protect and safeguard classified information. *See, e.g.*, ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017); ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007). Under Guideline C, the Directive provides that a person can indicate a preference for another country by exercising a prerogative of foreign citizenship, such as possession of a foreign passport. Directive, Enclosure 2 ¶ 10(a). *See* ISCR Case No. 03-12349 at 4 (App. Bd. Sep. 27, 2004). Under

¹There is no Constitutional right to counsel in a DOHA proceeding. DOHA applicants are not afforded the same protections as criminal defendants. *See, e.g.*, ISCR Case No. 12-08972 at 2 (App. Bd. Apr. 25, 2016).

the facts of this case we find no reason to disturb the presumption of nexus. The Judge's conclusion that Applicant's circumstances raise security concerns is sustainable.

Applicant argues that she does not actually come in contact with classified information in the performance of her duties. However, this is not a relevant matter for our consideration. Our jurisdiction is limited to consideration of the following areas: whether the Judge's findings are supported by substantial evidence; whether the Judge adhered to the procedural requirements of the Directive; and whether the Judge's rulings and conclusions are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32. We have no authority to consider the extent to which an applicant may or may not actually have access to classified information in the course of his or her job. *See, e.g.*, ISCR Case No. 14-00508 at 2-3 (App. Bd. Jan. 23, 2015).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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 Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board