

KEYWORD: Guideline B

DIGEST: Applicant argues that the Judge did not consider all of the evidence. These arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law.

CASENO: 15-01979.a1

DATE: 04/27/2017

DATE: April 27, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 15-01979
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 9, 2015, 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 February 8, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gregg A. Cervi denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: 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 is a 59-year-old employee of a defense contractor. He is a U.S. citizen by birth and has no foreign citizenship. He has worked in a number of overseas locations and has held a security clearance for more than 30 years. In 2011, he married his current wife, an Israeli citizen, whom he met while working in Israel. She is applying to become a permanent resident of the United States. She owns a home in Israel valued at about \$120,000. She has three adult children who are citizens and residents of Israel. His wife and stepchildren have completed compulsory military service in Israel. He now lives in another foreign country with his wife and maintains regular contact with his stepchildren. The record is devoid of substantive background information on Applicant's wife and stepchildren, including no detailed information with respect to their Israeli military service such as dates of service, rank, division in which they served, or military training and specialty. Additionally, the record does not show documentary evidence of U.S. permanent residence applications and their current status.¹

Applicant asserts he and his family are law-abiding citizens and do not belong to any group or organization that may conflict with his personal or professional life. He stresses he is a loyal U.S. citizen, but did not include documentary evidence of character or employment performance.

Israel is a close ally of the United States. It has been identified as a major practitioner of industrial espionage against U.S. companies. There have been instances of illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to Israel. U.S. and Israel have disagreed over Israeli sales of U.S. and Israeli technologies to third-party countries, including India, China, and Russia. Human rights violations have involved Palestinian detainees or Arab Israelis. Terrorist suicide bombings are a continuing threat in Israel, and U.S. citizens in Israel are advised to be cautious.

The Judge's Analysis

The Judge found that Applicant connections to Israel raised security concerns under

¹ Decision at 3.

Disqualifying Conditions 7(a),² 7(b),³ and 7(e).⁴ The Israeli citizenship of Applicant's wife and stepchildren, some of whom reside in Israel, coupled with their connection to the Israeli military, establishes a heightened risk. Applicant has strong ties to Israel through his wife and stepchildren. These family ties, coupled with Israel's record of industrial espionage, preclude a finding that it is unlikely Applicant will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government, and the interests of the United States. Without additional facts that are not contained in the record, the Judge was not convinced Applicant would resolve any conflict of interest in favor of U.S. interests. His indirect interest in the his wife's home in Israel has the potential to result in a conflict of interest. In his whole-person analysis, the Judge found that, based on the information available, Applicant's divided loyalties and foreign financial interests preclude a finding that he can be expected to resolve any conflict of interest in favor of the United States.

Discussion

Applicant argues that the Judge did not consider all of the evidence. For example, he stated the Judge did not take into consideration that he has a permanent home in the United States, that he and his wife no longer reside in Israel, and that he intends to move his entire family to the United States. These arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-04856 at 2-3 (App. Bd. Mar. 9, 2017). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). Additionally, we find no basis for concluding the Judge erred in his whole-person analysis.

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."

² Directive, Enclosure 2 ¶ 7(a) states, "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion[.]"

³ Directive, Enclosure 2 ¶ 7(b) states, "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information[.]"

⁴ Directive, Enclosure 2 ¶ 7(e) states, "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation[.]"

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