

KEYWORD: Guideline B

DIGEST: Viewed as a whole, the Judge’s material findings are based upon “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. Adverse decision affirmed.

CASENO: 15-07079.a1

DATE: 10/19/2017

DATE: October 19, 2017

In Re:	)	
	)	
-----	)	ISCR Case No. 15-07079
	)	
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 April 21, 2016, 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 August 8, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Martin H. Mogul 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 decision was arbitrary,

capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant was born in India, moving to the U.S. in the early 2000s. She became a U.S. citizen about eight years after she moved here. Applicant and her spouse have two children, both of whom are U.S. citizens. Her husband was born in India and is an Indian citizen.

Applicant's parents, siblings, and parents-in-law are citizens and residents of India. One of her siblings works for a branch of the Indian government. Applicant and her spouse maintain a bank account in India, and her spouse has five bank accounts there as well. Applicant's spouse is responsible for the care of his parents and siblings, who are financially dependent upon him. In addition, Applicant's spouse owns eight properties in India, valued at about \$560,000. Most of this property was inherited. Applicant's spouse also has a life insurance property acquired from an Indian agency.

Before becoming a U.S. citizen, Applicant and her spouse considered moving back to India, which was a reason that they invested in property in India. After they had children, they decided to remain in the U.S.

India is a secular democratic republic. The U.S. has sought to strengthen its relationship with India, although there are differences between the two countries, such as India's nuclear weapons program, its abuses of human rights, and its cooperation with Iran. India is an active collector of U.S. protected information.

### **The Judge's Analysis**

The Judge concluded that Applicant's connections to India raise security concerns. He further concluded that none of the mitigating conditions were entitled to favorable application. He stated that the evidence left him with doubts as to Applicant's suitability for a security clearance.

### **Discussion**

Applicant cites to record evidence that she believes the Judge did not consider. In doing so, she refers to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. She notes that her spouse is a naturalized citizen of the U.S. She also cites to evidence that much of the property that he owns in India was inherited. Regarding the nationality of Applicant's spouse, her security clearance application (SCA) states that he is a citizen of India, although she corrected this during her clearance interview, in which she states that he is a citizen only of the U.S. Item 4, SCA, at 22; Item 6, Personal Subject Interview, at 3. This error did not likely affect the outcome of the case, given the extent of Applicant's established connections in India. Viewed as a whole, the Judge's material findings are based upon "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." Directive ¶ E3.1.32. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-08711 at 3 (App. Bd. Aug. 24, 2017).

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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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