

KEYWORD: Guideline C; Guideline B

DIGEST: The Judge’s adverse findings under Guideline C only involved Applicant voting in a foreign election. The adjudicative guidelines in the Directive were revised in June 2017. U.S. citizen’s exercise of any right or privilege of foreign citizenship without an objective showing of a conflict or attempt at concealment is not disqualifying. As part of that revision, voting in a foreign election is no longer listed as disqualifying condition under Guideline C. Given this recent change in the guidelines, we are treating the Judge’s adverse findings under Guideline C as a nullity. The Judge’s adverse findings under Guideline B are sustainable on this record. Adverse decision affirmed.

CASENO: 15-08250.a1

DATE: 07/28/2017

DATE: July 28, 2017

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In Re:)	
)	
-----)	ISCR Case No. 15-08250
)	
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 20, 2016, 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 hearing. On May 15, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 erred in his findings of fact. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He immigrated to the United States in 1995 and became a U.S. citizen in 2006. He holds dual citizenship with Turkey. His wife is a U.S. citizen who also holds citizenship with Turkey and Iran. One of his children is a naturalized U.S. citizen and the other is a U.S. citizen by birth.

Applicant voted in Turkey's national elections in 2014 and 2015. He exercised no other Turkish privileges since becoming a U.S. citizen.

Applicant's parents are citizens and residents of Turkey. His mother is a homemaker. His father is a retired attorney who once served in the Turkish military. His mother became a U.S. citizen in 2013. He provides periodic financial assistance to his parents. He communicates with them weekly and sees them yearly.

Applicant has two sisters, extended family members, and close friends who are citizens and residents of Turkey. His oldest sister works for a state government agency and may have access to sensitive or classified information. His younger sister works for a bank that is not associated with the government. He communicates with his sisters bi-weekly. One close friend is a food engineer for the Turkish government.

Applicant has in-laws who are citizens and residents of Iran. His mother-in-law holds dual citizenship with Iran and the United States. His father-in-law has permanent resident alien status in the United States. His mother-in-law has visited his family in the United States on multiple occasions. Both Applicant and his wife maintain frequent contact with her parents.

Applicant has no property or financial interests in Turkey. His financial interests in the United States total about \$650,000. It is uncertain whether he will inherit property in Turkey.

The United States and Turkey enjoy close economic, political, and security relations. Turkey is a NATO ally. In recent years, Turkey faced significant terrorist threats. Human rights problems have also plagued Turkey.

Iran remains the most active state sponsor of terrorism. Its financial, material, and logistical support of terrorists and militant groups throughout the Middle East and Central Asia had a direct impact on international efforts to promote peace, threatened economic stability in the Gulf, and undermined the growth of democracy. Iran's nuclear program remains a pressing U.S. concern.

U.S. State Department reports cite significant human rights concerns in Iran.

The Judge's Analysis

By voting in Turkey's national elections in 2014 and 2015 after becoming a U.S. citizen, Applicant created concerns over his having a split preference for the United States and Turkey. Considering the geopolitical situation in Turkey, the country remains a heightened risk for applicants with family members who are citizens and residents of Turkey. His sisters hold positions in Turkey that potentially afford them access to sensitive or classified information. He maintains biweekly contact with his sisters but never discusses the specifics of his work. Turkey is a country in transition, plagued with external and internal terrorist threats, and his parents and sisters remain at potential risk of foreign coercion, pressure, or influence.

Iran is a hostile country with no diplomatic relations with the United States and is a state sponsor of terrorism. It also lacks a track record for respecting human rights. "Applicant's demonstrated loyalty, patriotism, and professional commitments to the United States, while considerable, are not enough to neutralize all potential conflicts that are implicit in his relationship with his wife's parents residing in Iran." Decision at 21. Their residence in Iran cannot be characterized as sufficiently insulated from potential pressures or influences from the Iranian government.

Discussion

The Judge's adverse findings under Guideline C only involved Applicant voting in a foreign election. We note the adjudicative guidelines in the Directive were revised in June 2017. Under this revision, a U.S. citizen's exercise of any right or privilege of foreign citizenship without an objective showing of a conflict or attempt at concealment is not disqualifying.¹ As part of that revision, voting in a foreign election is no longer listed as a disqualifying condition under Guideline C. Given this recent change in the guidelines, we are treating the Judge's adverse findings under Guideline C as a nullity because there is no showing that Applicant's voting in the Turkish elections created a conflict. Moreover, since we are invalidating the Judge's adverse findings under Guideline C, we need not address Applicant's allegations of error that solely address those findings. The remainder of this decision addresses Applicant's allegations of error regarding the Judge's adverse findings under Guideline B.

Applicant challenges some of the Judge's findings under Guideline B.² For example, he first contends that the Judge erred in finding that his mother became a naturalized U.S. citizen in 2013. He noted that his mother-in-law is a naturalized U.S. citizen, but his mother is a Turkish citizen. Second, Applicant states the Judge erred in finding that he provided financial support to his parents.

¹ See, Directive, Encl. 2, App. A ¶ 9.

² We examine a Judge's findings to see if they are supported by substantial evidence, *i.e.*, "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 ¶ E3.1.32.1. See, *e.g.*, ISCR Case No. 14-04226 at 3 (App. Bd. Aug. 18, 2015) and ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

He denied providing them financial support and noted he testified that, if one of his parents passed away, he may need to help the survivor financially. Third, he argues that the Judge’s finding that “Applicant retains deep affections and concerns for the safety and well-being of his parents and sisters residing in Turkey” is partially incorrect. He concedes that he has deep concerns for their safety, but states Turkey is not a war-torn country and his concerns would apply equally across Europe, citing recent terrorist attacks in an European country. Even if the Judge erred as Applicant avers, those errors, whether considered individually or cumulatively, were harmless because they likely had no affect on the Judge’s ultimate decision.³ *See, e.g.*, ISCR Case No. 15-00535 at 3 (App. Bd. Mar. 13, 2017).

The Judge’s adverse findings under Guideline B are sustainable on this record. The Judge examined the relevant evidence and articulated a satisfactory explanation for the adverse decision under that guideline . “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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board

³ We note that an applicant with family members in a country that is hostile to the U.S., such as Iran, bears a “very heavy burden” to show that the family members are not a means of coercion or exploitation. *See, e.g.*, ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).