

KEYWORD: Guideline B; Guideline E

DIGEST: Administrative notice may be taken of official documents posted by Federal departments and agencies on their websites. Adverse decision affirmed.

CASENO: 16-02522.a1

DATE: 07/12/2017

DATE: July 12, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-02522
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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 July 27, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On April 6, 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 issue on appeal: whether the Judge’s adverse decision was

arbitrary, capricious, or contrary to law. The Judge's favorable finding on the sole Guideline E allegation was not raised as an issue on appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was born in Afghanistan and moved to Pakistan at a young age. He returned to Afghanistan after he graduated from high school. He worked as a linguist and translator for U.S. Forces in Afghanistan before coming to the United States and later becoming a U.S. citizen in 2014.

Applicant's wife is an Afghan citizen, holds a U.S. alien registration card, and resides with his parents in Afghanistan. His parents, four brothers, three sisters-in-law, a sister, two uncles, and friends are citizens and residents of Afghanistan. He also has brothers, a sister-in-law, and in-laws who are citizens of Afghanistan residing in Pakistan.

Applicant has received many certificates of appreciation and letters of commendation. An Army colonel commented that Applicant strongly contributes to his organization and he never questioned Applicant's loyalty.

Afghanistan faces many challenges including defeating terrorists and insurgents, recovering from decades of civil strife, and rebuilding its economy and infrastructure. Its human rights record is generally poor. The State Department classifies the situation in Afghanistan as a critical security threat to the United States. Pakistan has experienced extensive terrorist activities. The State Department warns U.S. citizens to curtail non-essential travel to Pakistan because of terrorist threats.

The Judge's Analysis

Applicant has an extensive number of immediate family members who are citizens of Afghanistan and reside in either Afghanistan or Pakistan. He maintains some level of personal contact with these relatives. Both countries experience dangerous, destabilizing terrorist activities. The State Department issued travel warnings for U.S. citizens in both countries based on terrorist activities and the inability of the countries to provide security. Having spent only a short time actually living in the United States, Applicant's ties to the United States are not extensive. He has no family members in the United States. He has not met the burden of showing the presence of his family members in Afghanistan and Pakistan are not a security concern.

Discussion

In the appeal brief, Applicant challenges the Judge's consideration of travel warnings issued by the U.S. Department of State for Afghanistan and Pakistan. He referred to those documents as not an "ideal cause" for the unfavorable decision. Appeal Brief at 2. The travel warnings were part of the administrative notice requests that Department Counsel submitted in her File of Relevant Material (FORM). In submitting a response to the FORM, Applicant did not object to any exhibits attached to the FORM. It is well established that a Judge may take administrative or official notice, the equivalent of judicial notice in administrative proceedings, of certain facts in appropriate cases. More specifically, the Board has held that administrative notice may be taken of official documents posted by Federal departments and agencies on their websites. *See, e.g.*, ISCR Case No. 99-0452

at 4, n. 7 (App. Bd. Mar. 21, 2000) and ISCR Case No 02-06478 at 4 (App. Bd. Dec. 15, 2003). In this case, the Judge committed no error by considering the State Department travel warnings for the countries in question. Furthermore, the weight accorded the travel warnings was appropriate for the issue the Judge was assessing – the role of terrorism in the countries where Applicant has ties.

In the appeal brief, Applicant also describes his upbringing and family situation and contends his family is not a threat to U.S. security interests. As best we can discern, he is arguing that the Judge did not consider all of the record evidence and mis-weighed the evidence. His arguments, however, are neither sufficient to rebut the presumption that the Judge considered all of the record evidence nor enough 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).

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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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