

KEYWORD: Guideline B

DIGEST: Applicant contends that the Judge erred in finding that his brother works for the Pakistani government. He states his brother works for a private entity that supports the government. In his security clearance application, however, he listed his brother's employer as the Pakistani government. At the hearing, he also testified that his brother worked for the Pakistani government. The Judge's finding about the brother's employment is based on substantial evidence, or constitutes a reasonable characterization or inference that could be drawn from the record. Adverse decision affirmed

CASENO: 16-03047.a1

DATE: 05/29/2018

DATE: May 29, 2018

In Re:	)	
	)	
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	)	
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 July 22, 2017, 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 hearing. On February 15, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy 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 was born in Afghanistan but lived in Pakistan while attending school. He was later arrested three times by Afghan authorities, including for aiding rebels in their fight against Soviet forces. His last arrest resulted in his imprisonment for a year before he escaped to join his family in Pakistan. He was smuggled out of Pakistan and received political asylum in the U.S. in the early 1990s. Soon thereafter, he returned to Pakistan for about six months to visit his family and marry. With the exception of occasional visits to Pakistan to visit his wife and family and during deployments to Afghanistan, he has since lived in the U.S.

Applicant became U.S. citizen in the early 2000s at which time he sponsored his wife and their children for entry into the U.S. He reported he had been granted a security clearance in the past. In the late 2000s, Federal law enforcement authorities investigated him for not properly translating material because of his beliefs. However, the investigation developed no derogatory information. He accepted his current job in 2016 and deployed to Afghanistan for about a year.

Applicant’s daughter is completing her educational requirements in Pakistan. He expects her to return to the U.S. to pursue her career. He supported her financially during her studies.

Applicant has two siblings who are dual Afghan-Pakistani citizens. Both siblings reside in Pakistan and are married to Pakistani citizens. One sibling is an employee of the Pakistani government. Applicant is sponsoring both of his sibling for U.S. immigration visas. He has sent money to one sibling with whom he has monthly contact.

Applicant’s parents-in-law are citizens and residents of Pakistan. They are elderly and in poor health. Applicant’s wife is in regular contact with her parents. His wife’s brother is an officer in the Pakistani military. Applicant has little contact with this brother-in-law, but his wife is in regular contact with him. His wife owns a home in Pakistan that she received from her parents when she married. When his parents passed away, Applicant inherited a share of the family home. Applicant estimates the value of these two properties is about \$20,000. He and his wife do not own property in the U.S.

U.S. military members praised Applicant's performance of duties. He has participated in multiple combat patrols and sensitive missions. He is described as maintaining a calm professionalism in the face of adversity.

Pakistan continues to experience significant terrorist violence. Terrorist organizations operate from there. The State Department warns U.S. citizens against all non-essential travel to Pakistan due to the risk of terrorism and armed conflict. Elements of the Pakistani government reportedly have committed human rights violations. Government corruption is also a serious problem in Pakistan.

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

Applicant continues to have strong family ties to Pakistan. One of his siblings is a Pakistani government employee, and his brother-in-law is an officer in the Pakistani military. His daughter is completing her education there. These circumstances, given the security concerns in Pakistan, create a heightened risk of foreign pressure. While he and his wife have applied to bring family members to the U.S., they remain potentially vulnerable to such foreign pressure. The Judge found in favor of Applicant on the allegation that he did not properly translate material because of his beliefs and on allegations pertaining to property interests in Pakistan. The Judge found against Applicant on five allegations pertaining to his family members in Pakistan.

### **Discussion**

Applicant's appeal brief contains documents that were not previously presented to the Judge for consideration. Those documents constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.1.29.

In his appeal brief, Applicant essentially contends that Judge erred in finding that his brother works for the Pakistani government. He states his brother works for a private entity that supports the government. In his security clearance application, however, Applicant listed his brother's employer as the Pakistani government. Government Exhibit (GE) 1. At the hearing, Applicant also testified that his brother worked for the Pakistani government. Tr. at 42-43 and 56. The Judge's finding about the brother's employment is based on substantial evidence, or constitutes a reasonable characterization or inference that could be drawn from the record. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant contends that the Judge did not give appropriate weight to mitigating factors under Guideline B. For example, he argues that his foreign relatives pose no conflict of interest for him, noting some are awaiting visas to immigrate to the U.S. and that his daughter is a U.S. citizen. He further emphasizes that he has undivided loyalty to the U.S. and, with the exception of his daughter, has minimal communication with relatives in Pakistan. His arguments, however, are neither enough

to rebut the presumption that the Judge considered all of the evidence in the record, 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. 14-01284 at 3 (App. Bd. Apr. 6, 2015).

Applicant also contends that he did not understand the significance of the evidence that Department Counsel presented regarding Pakistan. He states that he did not present a defense to such matters because they were not referenced in the SOR and were not discussed during the hearing. He argues some of the information presented about Pakistan was conflated and flawed. First, we note that, while *pro se* applicants are not expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014). Second, Applicant acknowledged that, prior to the hearing, he received a copy of Department Counsel's request for administrative notice of facts pertaining to Pakistan, which included documents about that country from the State Department and White House. At the hearing, the Judge marked the administrative notice request as GE 5, explained to Applicant that the documents pertained to the relationship between the U.S. and Pakistan and contained facts about Pakistan, and asked Applicant if he had any objection to that exhibit. Applicant had no objection to that exhibit. Tr. at 25-27. Applicant has not established that the Judge erred in admitting into evidence or considering the administrative notice request.

Applicant further argues that he was granted a security clearance in the past when the security situation in Pakistan was worse than today. It is well established, however, that there is no right to a security clearance, and a past decision to grant or continue a security clearance does not give rise to any right or vested interest in a security clearance. *See, e.g.*, ISCR Case No. 03-24144 at 6 (Dec. 6, 2005). Furthermore, a favorable security clearance decision does not preclude the Federal Government from reassessing a person's security eligibility in light of current circumstances. *Id.* Applicant's argument in this area fails to establish the Judge committed any error. He also asserts that the SOR allegation that he did not properly translate material because of his beliefs may have improperly influenced the Judge. As discussed above, the Judge found in favor of Applicant on that allegation. His assertion that allegation may have had a negative impact on the Judge amounts to mere speculation and is unpersuasive.

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