



The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 16, 2017, 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 C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Department Counsel requested a hearing. On January 31, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge’s favorable decision under Guidelines B and C ran contrary to the weight of the record evidence and whether the Judge’s whole-person analysis was erroneous. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact**

Applicant was born in the United Kingdom (U.K.). He served in the British military from 1988 until 2010 and routinely trained with and briefed U.S. personnel. He also served a year in the Middle East, working with U.S. forces and reporting to a U.S. commander. In doing so, he participated in operations that were dangerous and that saved the lives of U.S. troops. He had access to U.S. protected information during this time.

Applicant had attempted to enlist in the British military after the Falklands War but was rejected for medical reasons. After his enlistment in 1988, he was selected for a career field that requires great technical skill and is routinely dangerous. The Judge characterized Applicant’s military service as “exceptional.” Decision at 5. Applicant retired from the British military in 2010, as a result of which he receives a pension of about \$15,000 annually. He deposits this in a bank account for the use of his son, who is attending college in the U.K. Applicant’s former mentor, who himself had been a member of the British military but now works as a contractor in the U.S., offered him a position. Upon this offer, Applicant and his family moved to the U.S. Applicant owns a home in this country, and the value of his assets here exceeds one million dollars. Applicant has established strong ties within the U.S. and is active in his community.

Based upon a national interest waiver application, Applicant became a U.S. citizen in mid-2016. He testified that he takes his naturalization oath seriously and considers himself solely a U.S. citizen. Friends and neighbors in attendance wrote of Applicant’s pride during the naturalization ceremony. Applicant’s evidence included numerous character references attesting to his professional qualities and attainments, his fascination with U.S. culture, and his strong ties within the U.S. After becoming a U.S. citizen, Applicant traveled to the U.K. on a British passport to attend the funeral of his father.

The U.S. and the U.K. are the closest of allies, sharing a common language, ideals, and democratic practices. The two countries consult with one another continually on foreign policy.

## **The Judge's Analysis**

The Judge stated that Applicant has reported his use of his British passport. He also stated that Applicant's British military service, though extensive, does not pose a concern in light of his having previously had access to U.S. protected information for a year while serving in the Middle East. The Judge cited to evidence of Applicant's ties within the U.S. and characterized him as a patriotic and loyal American. He concluded that the record as a whole left him with no questions or doubts about Applicant's eligibility for a clearance.

## **Discussion**

Department Counsel argues that the Judge's findings and conclusions are not supported by the weight of the record evidence. In presenting his argument, Department Counsel does not challenge the Judge's findings but addresses other evidence that he believes the Judge failed properly to weigh and that undermine the favorable decision. He argues that facts and circumstances attending Applicant's British military career are a strong reason to believe that he retains a preference for the U.K.

We have considered Department Counsel's argument in light of the record as a whole. Given that Applicant's foreign military service occurred in the past, and given Great Britain's status as a significant U.S. ally, we conclude that the Judge's decision under Guideline C is not arbitrary, capricious, or contrary to law.<sup>1</sup> We further conclude that, given evidence of the relative strength of Applicant's ties within the U.S. and those within the U.K., the Judge's decision under Guideline B is not arbitrary, capricious, or contrary to law.

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<sup>1</sup>See Directive, Encl.2, App. A ¶¶ 11(e): "the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern;" and 11(f): "the foreign preference, if detected, involves a foreign country, entity, or association that poses a low national security risk[.]"

**Order**

The Decision **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