

KEYWORD: Guideline B

DIGEST: The Judge's findings on the matters that Applicant has discussed are not erroneous. Applicant claims that he did not state that he might live in Afghanistan at some time in the future but, rather, simply visit there. The challenged finding is based upon Applicant's testimony and is sustainable. Adverse decision affirmed.

CASENO: 17-03765.a1

DATE: 08/27/2018

DATE: August 27, 2018

In Re:)
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Applicant for Security Clearance)
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ISCR Case No. 17-03765

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 December 8, 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 June 4, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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, moving to the U.S. in the early 2000s and becoming a U.S. citizen about 8 years after arriving here. He has no spouse or children. He stated that he had renounced his Afghan citizenship. He has been employed in his current job since late 2017.

Applicant left Afghanistan because the government there wanted him to enter the military. He lived in various other countries in the Middle East for many years and was eventually granted entry into the U.S. through a refugee program. He later returned to Afghanistan, living there for about 2 years. He opened a bank account there, transferring his funds from a U.S. bank and then later back to that bank. Although he maintains the account in Afghanistan, he has only about \$100 in it.

Applicant has numerous siblings and other relatives who are citizens and residents of Afghanistan. He also has three siblings who are citizens of Afghanistan but who reside in Iran as refugees. These siblings traveled to Afghanistan to visit Applicant while he was there, and he visited them in Iran for a period of about six weeks a couple of years later. In doing so, he used an Afghan passport because Iran would not permit him to enter using a U.S. one. Applicant speaks by phone with two of the three siblings who reside in Iran every three to four months.

Applicant also has several cousins who are citizens and residents of Afghanistan. One of these cousins serves in the military. Applicant contacts his cousins from about every two weeks to every two months. He sends money to one of them to assist with expenses. Applicant owns some land and a car in the U.S. and has about \$11,000 in savings. Applicant testified that he may return to Afghanistan in the future to live but will remain in the U.S. for now.

Applicant has received numerous certificates and letters of appreciation from his employers. He has participated in training events for U.S. forces, thereby contributing greatly to the success of the exercises. Applicant’s references applauded his expertise, professionalism, and outstanding service.

Various extremist organizations are active in Afghanistan. These groups target U.S. personnel, including civilians. The Afghan government struggles to control a remote region of the country where terrorists operate. The country endures threats from as many as 20 such organizations. Iran has been designated as a state sponsor of terrorism, cultivating operatives across the globe. The country poses a significant cyber threat against the United States. Citizens of Iran are not eligible to travel to the U.S., due to an increased likelihood that such persons pose credible threats to the national security.

The Judge's Analysis

The Judge cited to her findings about the geopolitical circumstances of Afghanistan and Iran, to Applicant's family contacts in those countries, and to Applicant's uncertainty as to whether he will return to Afghanistan to live. She concluded that these matters evidenced a heightened risk that Applicant could be subjected to foreign influence. In evaluating Applicant's case for mitigation, the Judge noted the frequency with which Applicant contacts at least some of his relatives who live in Afghanistan and in Iran. Though noting Applicant's commitment to working with Federal contractors in support of U.S. missions overseas, the Judge concluded that it was too great a burden on Applicant to expect him to be faithful to the interest of the U.S. and to resolve any conflict of interest in favor of the U.S.

Discussion

Applicant cites to evidence of armed conflict in Afghanistan, as a consequence of which he left the country and why some of his relatives moved to other countries. He states that he has no business interests in Afghanistan, that his family is not involved in terrorist activity, and that he has no contacts with Afghan business organizations, the government there, or with any other group except his family. Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence or to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 16-01077 at 2-3 (App. Bd. Apr. 25, 2018).

Applicant argues that, "while in court I mentioned AT LEAST two errors I found in their summary of my petition, *i.e.*, one error misquoted me as saying my sister [name] . . . was alive . . . also they misquoted me as saying I lived in [Foreign Country] six months when in fact I spent more than six years there." Appeal Brief at 1. It is not clear what document Applicant is referring to, although his interview summary describes the named sister as being alive. Government Exhibit 5. In any event, the Judge's findings on the matters that Applicant has discussed are not erroneous. Applicant claims that he did not state that he might live in Afghanistan at some time in the future but, rather, simply visit there. The challenged finding is based upon Applicant's testimony and is sustainable. Tr. at 77. The Judge's material findings are based upon substantial evidence or constitute reasonable inferences from the record. *See, e.g.*, ISCR Case No. 17-01181 at 4 (App. Bd. Apr. 30, 2018).

Applicant submitted additional argument and information after the date of his appeal brief. We are authorized to accept only one appeal brief from a party. Directive ¶ E3.1.30. *See also* ISCR Case No. 14-04926 at 1 n.1 (App. Bd. Dec. 20, 2016). In addition, the later submission contains new evidence, which we cannot consider. Directive ¶ E3.1.29. The Board placed the second submission in the file.

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