

KEYWORD: Guideline B; Guideline F

DIGEST: Even if the Judge erred in one of his findings, the error did not affect the outcome of the case and, therefore, was harmless. Applicant failed to rebut the presumption that the Judge considered all of the evidence. Adverse decision affirmed.

CASE NO: 13-00175.a1

DATE: 03/20/2014

DATE: March 20, 2014

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 April 17, 2013, 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 F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On January 9, 2014, after considering the record, 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's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant was born, raised, and educated in Pakistan. He earned a bachelor's degree there in the mid-1980s. He came to the U.S. in the late 1980s and became a U.S. citizen several years later. In the early 2000s he married his current spouse, who is a citizen of Pakistan who holds permanent residence in the U.S. Applicant's mother and three of his siblings are citizens and residents of Pakistan. Since becoming a U.S. citizen, Applicant has traveled to Pakistan on eight occasions to visit members of his family. Applicant maintains monthly to quarterly contact with his family members in Pakistan.

Pakistan is a parliamentary federal republic. Pakistan provided support to U.S. efforts to combat terrorists following the attacks of September 11, 2001. However, there is anti-U.S. sentiment among certain political parties in Pakistan. An extensive terrorist network operates within the borders of that country. Senior Taliban leaders enjoy a safe haven there. These terrorist groups target U.S. and other western interests, as well as officials of the Pakistani government. In May 2011, U.S. military personnel raided a compound in Pakistan and killed al-Quaida leader Osama bin Laden. That he was found in a residential neighborhood illustrates the security concerns regarding Pakistan. There are reports that authorities in Pakistan use wiretaps and intercept mail without court approval, in addition to monitoring cell phone and electronic communications.

Applicant has incurred a number of delinquent debts since 2009, for such things as auto loans and credit card services. Applicant also had a judgment against him based upon a debt. He attributes his financial problems to a job loss three years ago. However, from 2005 until the present he was employed for all but nine months, that is, from October 2011 until the following June. He presented no evidence of credit counseling or debt consolidation, nor did he provide evidence of repayment plans approved by any of his creditors. His financial statement reported a monthly remainder of \$1,037 after expenses.

Applicant enjoys a superb reputation for the quality of his work. This reputation is evidenced by several character references and by a certificate of achievement.

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

The Judge concluded that Applicant's circumstances raised concerns under both Guidelines alleged in the SOR. In further concluding that Applicant had not mitigated these concerns, the Judge stated that there is little evidence in the record about his relatives, as a consequence of which the potential significance of his contact and visits with them cannot be discounted. None of Applicant's contacts with his Pakistani family members can be viewed as casual or infrequent. The Judge stated that Applicant's close family connections in Pakistan raise a heightened risk that he could become subjected to coercion, a risk that his favorable evidence was not sufficient to mitigate.

Regarding Applicant's finances, the Judge stated that, while his problems may have been affected by his job loss, which was beyond his control, there is insufficient information about his efforts at repayment to permit a conclusion that he had acted responsibly. He stated that the evidence in the record was limited, providing little insight into the origin of Applicant's debts, his payment history, and his attempted efforts since having received the SOR. Given evidence that Applicant has been gainfully employed for several years, he could be expected to have initiated more timely and substantial payments than are shown in the record. The Judge also stated that the paucity of record evidence undermined a favorable whole-person assessment. Though crediting Applicant with some measure of debt resolution, he stated that Applicant's apparent lack of attention to older debts left him with doubts as to his fitness for a clearance.

## **Discussion**

Applicant challenges the Judge's finding that his wife holds permanent resident status in the U.S. He states that, to the contrary, she is a naturalized U.S. citizen, as he is. Although Applicant's security clearance application states that his wife is a U.S. citizen (Item 5 at 22-23), in his interview he described her as a citizen of Pakistan. Item 7 at 2. A Judge's task includes resolving conflicts in the evidence, and it is not clear that the Judge erred in this matter. However, Department Counsel, in the memorandum accompanying the File of Relevant Material, states that Applicant's wife is a U.S. citizen. Moreover, her citizenship status was not alleged in the SOR, and the Judge did not discuss this matter in his analysis, or otherwise give the appearance of having relied on it. Therefore, even if this finding is erroneous, the error is harmless in that it did not likely exert a material effect on the outcome of the case. *See, e.g.*, ISCR Case No. 12-04565 at 3 (App. Bd. Oct. 28, 2013).

In his appeal brief, Applicant cites to record evidence, such as his mother's age and physical condition and that some of his debts have been resolved. To the extent that he is arguing that the Judge did not consider this evidence, he has failed to rebut the presumption to the contrary. Moreover, as we have stated before, a party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient 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. 11-10695 at 2 (App. Bd. Jan. 24, 2014).

Applicant states that his remaining debts will be addressed one after another. Applicant's argument is not sufficient to undermine the Judge's conclusion that the record contained insufficient evidence to demonstrate mitigation. Promises to resolve debts in the future are not a substitute for "a meaningful track record" of debt resolution. ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases. *See, e.g.*, ISCR Case No. 12-12172 at 4 (App. Bd. Jan. 9, 2014). In addition, the Judge's conclusions about a paucity of evidence in mitigation of the concerns under both Guidelines reflect a reasonable interpretation of the record that was before

him. “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 Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board