

KEYWORD: Guideline B

DIGEST: Applicant's father lives in Afghanistan. Applicant made two untrue statements regarding his relationship with an Afghan official. Adverse decision affirmed.

CASENO: 07-13073.a1

DATE: 11/26/2008

DATE: November 26, 2008

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| In Re: |) | |
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| ----- |) | ISCR Case No. 07-13073 |
| |) | |
| Applicant for Security Clearance |) | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Shirley Reed, Esq., Diana Rugh Johnson, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security

clearance. On March 20, 2008, DOHA 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 August 29, 2008, after the hearing, Administrative Judge Charles D. Ablard denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s findings of fact are supported by substantial record evidence and whether the Judge erred in his application of the relevant mitigating conditions. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant was born in Afghanistan and came to the U.S. with his family when he was 18. He has several relatives, including in-laws, living in Afghanistan, and his wife is an Afghan citizen living in the U.S. Applicant’s father is a citizen and resident of Afghanistan, although Applicant has little contact with him. Applicant does not currently hold a security clearance. Applicant made two statements to investigators during the course of his security clearance investigation. These statements, which concerned Applicant’s relationship with a well-known Afghan official, were not true.¹

Afghanistan is an unstable country, much of which is under the control of insurgents opposed to the U.S. “[I]t is a dangerous part of the world where there are human rights abuses and acts of terrorism.” Decision at 4. “Applicant does not have a security clearance but desires one so that he can return to his country of origin and make a contribution to the U.S. national defense by working for the U.S. military as a translator for at least one year.” *Id.* at 3.

The Judge’s material findings of security concern are supported by substantial record evidence, or are reasonable inferences that could be drawn from the evidence, and are sustainable. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”); ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007). In light of the record as a whole, the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision, both as regards the mitigating conditions and the whole-person factors. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s decision that “it is not clearly consistent with national security to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 7. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security’”).

¹*See* Tr. at 46-7. “Q: Explain the circumstances of how . . . you told [U.S. officials] that he was a relative of yours. A: I was very nervous . . . [the agent] questioned are you a relative of [Afghan official]. I admit myself that I knew him . . . I said yes. But I didn’t change my answer there.”

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board