

KEYWORD: Guideline B; Guideline C

DIGEST: Applicant's father is a retired General resident in Lebanon, a country in which a terrorist organization (Hezbollah) operates and holds seats in the national assembly. Lebanon is heavily influenced by Syria . Favorable decision reversed.

CASENO: 08-02715.a1

DATE: 03/09/2010

DATE: March 9, 2010

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel, Esq., Department Counsel

**FOR APPLICANT**

Robert R. Bohn, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 6, 2008, DOHA 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). Applicant requested a hearing. On November 24, 2009, after the hearing, Administrative Judge Darlene D. Lokey Anderson 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 issue on appeal: whether the Judge’s favorable decision under Guideline B is erroneous.<sup>1</sup> Finding error, we reverse.

## **Facts**

The Judge made the following pertinent findings of fact: Applicant was born in the U.S. to Lebanese parents, thereby acquiring Lebanese citizenship. Shortly after her birth, her family moved to Lebanon, where Applicant grew up. She returned to the U.S. in the mid-2000s to attend college and has lived in this country ever since.

Applicant’s father is a citizen and resident of Lebanon. He is a retired general in the Lebanese military, living on a pension. He attends luncheons with other retired generals and has an acquaintance who is highly placed in the Lebanese government. Applicant’s father holds resident alien status in the U.S. and is seeking to become a citizen. When he is not visiting in this country, Applicant speaks with him approximately once every other week by telephone. Applicant has a sister who is a citizen of Lebanon residing in the U.S. Her brother is a dual citizen of Lebanon and the U.S., who also resides in the U.S.

Lebanese policy is heavily influenced by Syria, which is a state sponsor of terrorism. Lebanese instability enables foreign terrorist organizations to operate within its borders. The most prominent such organization is Hezbollah, which the U.S. has designated as a “Foreign Terrorist Organization.” The Lebanese government recognizes Hezbollah as a legitimate political party. It maintains offices in Beirut and elsewhere in Lebanon and is closely allied with Iran. Hezbollah attempts to obtain U.S. technology.

## **Discussion**

A Judge is required to “examine the relevant data and articulate a satisfactory explanation for” the decision, “including a ‘rational connection between the facts found and the choice made.’” *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 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). The Appeal Board may reverse the Judge’s decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶¶ E3.1.32.3 and E3.1.33.3.

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<sup>1</sup>The Judge’s favorable findings under Guideline C are not at issue in this appeal.

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. "The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole." *See, e.g.*, ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006).

In deciding whether the Judge's rulings or conclusions are arbitrary or capricious, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. In deciding whether the Judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Department Counsel argues on appeal that the Judge erred in her application of two Foreign Influence Mitigating Conditions (FIMC), 8(a)<sup>2</sup> and 8(c).<sup>3</sup> The essence of Department Counsel's argument is that Applicant's relationship with her father raises security concerns which Applicant's evidence failed to mitigate. This argument is persuasive.

The Board notes the Judge's findings that Applicant's father is a retired general; that he is a citizen and resident of Lebanon; that he associates frequently with other retired officers, including a high-ranking official in the Lebanese government; that Applicant speaks with her father by telephone on a bi-weekly basis; that Lebanese policy is heavily influenced by Syria, which is a state sponsor of terrorism; that Hezbollah, a terrorist organization, operates within Lebanon with considerable freedom; and that Hezbollah holds seats in the Lebanese National Assembly. We also note record evidence that Hezbollah is closely allied with Iran, taking its ideological inspiration from the Iranian revolution. U.S. State Department Country Reports on Terrorism, April 30, 2009, at 3. Without suggesting that Applicant's father has engaged in improper activity, it is nevertheless

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<sup>2</sup>Directive ¶ 8(a): "the nature of the relationships with the foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S[.]"

<sup>3</sup>Directive ¶ 8(c): "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation[.]"

foreseeable that his presence in Lebanon could be a means through which Applicant could be coerced into compromising classified activity. Applicant's evidence does not demonstrate that her ties to the U.S. so outweigh her ties to her father that she would not likely be placed in a position of choosing U.S. interests over his. *See* ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("The presence of immediate family members in a country which a hostile foreign power like Syria is attempting to destabilize, and in which terrorist groups operate with a substantial degree of autonomy, poses a real concern in the adjudication of [an applicant's] request for a security clearance").

By the same token, the evidence does not support a conclusion that Applicant's communications with her father are casual and infrequent. Indeed, there is a rebuttable presumption that communications with close family members are not causal by nature. *See* ISCR Case No. 07-13696 at 4 (App. Bd. Feb. 9, 2009). The Judge's findings and the record evidence concerning Applicant's communications with her father are not sufficient to rebut that presumption. In light of the above, we conclude that the Judge's favorable decision is not sustainable on this record, viewed in light of the *Egan* standard.

### **Order**

The Judge's favorable security clearance decision is REVERSED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board