

KEYWORD: Guideline B; Guideline F

DIGEST: The nature of an op-ed piece runs contrary to the types of material appropriate for administrative notice. Adverse decision affirmed.

CASENO: 09-03114.a1

DATE: 10/22/2010

DATE: October 22, 2010

In Re:)
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 -----) ISCR Case No. 09-03114
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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 Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 22, 2009, 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 F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 15, 2010, after the hearing, Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: (1) whether the Judge erred by finding that Applicant had four siblings residing in Syria, and (2) whether the Judge’s adverse security clearance decision was arbitrary, capricious, and contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.¹

The Judge made the following findings pertinent to the issues raised on appeal: The State Department has designated Syria as a state sponsor of terrorism. A number of the terrorist groups that have offices in Syria oppose U.S. policies in the Middle East, and have the ability and intent to undermine American interests. Syria has a poor human rights record, including severe restrictions on civil liberties. Syrian security forces have at times monitored its citizens’ telephone conversations, fax transmissions, and mail addressed to both citizens and foreign residents. Applicant was born in Syria. He became a naturalized U.S. citizen in 1989 and has lived in this country since then. Applicant’s family returned to Syria after Applicant moved to the United States. His father is deceased. His mother is a citizen and resident of Syria. Applicant talks to her approximately once a month. Applicant has four sisters. All of them are Syrian citizens, and all except one are Syrian residents. Applicant has two brothers. One is a Syrian citizen and resident, and the other a dual Syrian/U.S. citizen. Applicant has not traveled to Syria in 15 years. He has not seen any of his relatives since then, and he has not talked to any of his siblings in 10 to 15 years. He does occasionally share e-mails with his sister, who is a salesperson, once every few months.

The Judge reached the following conclusions: Directive, Enclosure 2 ¶ 8(c)² serves to mitigate the government’s security concerns regarding Applicant’s relationship with his siblings. Although Applicant has not seen his mother in 15 years, the fact that he talks to her about once a month makes ¶ 8(c) inapplicable. Despite Applicant’s connections with the U.S., the combination of Syria’s disregard for human rights, its sponsorship of terrorism, and its antipathy to U.S. regional interests make the other pertinent mitigating factors inapplicable.

Applicant asserts that the Judge erred in making a factual finding that, with one exception, his siblings reside in Syria. He states that the record shows he indicated at the hearing that he did

¹The Judge entered formal findings in favor of Applicant under Guideline F. Those findings are not at issue on appeal.

²“[C]ontact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence of exploitation.”

not know whether his siblings reside in Syria. The record consists of Applicant's answer to the SOR wherein he admits that three of his sisters are citizens and residents of Syria, and he admits that one of his brothers is a citizen and resident of Syria. In his hearing testimony, Applicant specifically indicated that two of his sisters were in Syria and that a third worked in Syria. He indicated that one of his brothers was in Syria. Considering the record as a whole, there is sufficient evidence to support the Judge's findings regarding the residency status of Applicant's siblings. Moreover, the Judge concluded that Applicant's relationship with his siblings was attenuated to the point where the government's security concerns were mitigated. Thus, any errors in the Judge's findings in this area would be harmless.

Applicant argues that those in the Syrian government do not know where he works, and if they do, they do not know what he does or what information he has access to. He gave similar testimony at the hearing below. Applicant's assertions are nonspecific and lack any significant probative value. They are insufficient to establish error on the part of the Judge. The Judge noted the specific circumstances of Syria's posture as a state sponsor of terrorism and its inhospitable posture toward human rights. These facts, together with Applicant's frequent contacts with his mother, who resides in Syria, provide a sufficient basis for the Judge's conclusion that Applicant failed to mitigate the foreign influence security concern.

As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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 the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. See, e.g., ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He adequately discussed why the disqualifying conduct established under Guideline B was not mitigated.

Applicant takes issue with the Judge's decision not to take administrative notice of Hearing Exhibit XII. The proffered exhibit is an opinion piece by a journalist. The Judge's decision not to consider the document was an appropriate recognition of the limits of judicial and administrative notice. See ISCR Case No. 02-06478 at 3-5 (App. Bd. Dec. 15, 2003)(the very nature of an op-ed piece runs contrary to the kinds of matters that traditionally have been deemed appropriate subjects for taking administrative notice).

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. See, e.g., ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance 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: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board