

KEYWORD: Guideline B; Guideline E; Guideline F

DIGEST: The Judge’s findings are consistent with Applicant’s admissions in response to the SOR.

CASENO: 09-03616.a1

DATE: 03/25/2011

DATE: March 25, 2011

In Re:	)	
	)	
-----	)	ISCR Case No. 09-03616
	)	
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 June 1, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline

E (Personal Conduct) and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 11, 2011, after the hearing, Administrative Judge Shari Dam denied Applicant's request for a security clearance. Applicant appealed 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 were supported by substantial record evidence and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

### **Facts**

The Judge made the following pertinent findings of fact: Applicant was born in Afghanistan and speaks two Afghan dialects. He experienced a period of political imprisonment after which he left Afghanistan, eventually settling in the U.S. He became a naturalized U.S. citizen in the early 1990s.

Applicant has numerous siblings, all born in Afghanistan. Three of them are both citizens and residents of Afghanistan. One is a citizen of a European country who resides in Afghanistan. He has sent this sibling \$200 every couple of months to assist in family support. For the past two or three years, he has sent \$600 to one of his cousins. He and his siblings inherited an interest in the family home in Afghanistan. One of the siblings lives in it. He has no other financial interests in that country and has expressed no interest in obtaining his \$10,000 share of the inheritance.

Applicant has a primary and secondary mortgage on his home in the U.S. He fell behind in his payments due to loss of employment. Although he has finalized a loan modification for the first mortgage, he is delinquent by \$6,000 for the second. The lender has placed a lien on the property. This debt is the basis for the sole allegation under Guideline F.

During previous employment, Applicant was deployed to Afghanistan. This was his first visit to the country since leaving it twenty years before. While there, he left base to return a car that he had rented for another colleague who had returned to the U.S. Upon returning to base, his employment was immediately terminated, because Applicant did not receive prior authorization for the trip. Applicant was aware of the requirement for authorization, but he did not take it seriously.

### **Discussion**

Applicant contends that the Judge made errors in her findings. For example, he states that he has no firm obligation to send money to his Afghani relatives and that some of his siblings are step-siblings. The Judge's findings are consistent with Applicant's admissions to the SOR. Moreover, after reviewing the record, we conclude that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern

are sustainable. *See, e.g.*, ISCR Case No. 08-11735 at 2-3 (App. Bd. Sep. 21, 2010).

In support of his appeal, Applicant has submitted new evidence, in the form of a document that purports to show forgiveness of the debt alleged in the SOR. We cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). *See also* ISCR Case No. 08-05379 at 2 (App. Bd. Sep. 15, 2010). However, even if we did, under the facts of this case the decision would remain the same. To the extent that the offered document shows that the Judge’s findings contain an error, the error is harmless.

The record supports a conclusion that the Judge examined the relevant data and articulated 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 Judge’s adverse 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).

**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