

KEYWORD: Guideline B

DIGEST: The Judge’s conclusion that Applicant had made inconsistent statements was supported by the record evidence. The Judge’s essential findings are supported by substantial record evidence. Adverse decision affirmed.

CASE NO: 10-01846.a1

DATE: 09/13/2011

DATE: September 13, 2011

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 Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 7, 2010, 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 June 16, 2011, after the hearing, Administrative Judge Mark Harvey 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; whether the Judge’s credibility determination was in error; whether the Judge’s application of the pertinent mitigating conditions was in error; and

whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a linguist and cultural advisor employed by a Defense contractor. He was born in Afghanistan.

Applicant is married with three children. His spouse and children were all born in Afghanistan. Applicant attended college in Afghanistan, studying law and political science. He also attended a U.S. university for one year in the late 1960s. Returning to Afghanistan, he served for a year in the Afghan military and then worked for the Afghan government for about 11 years. After a period of unemployment he took another position with the Afghan government. The Judge characterized this job as "particularly important during a 3-year-period in the 1980s and during a 2-year-period in the 1990s." Decision at 4.

In the mid-1990s, Applicant entered the U.S. on a tourist visa. After receiving threatening communications from sources in Afghanistan, Applicant applied for asylum in the U.S. Subsequently, Applicant, his spouse, and two of his children were granted asylum. The application of the remaining child was delayed for over two years. "Applicant's two daughters, his wife and his son left Asia and lived in [a third country] until they moved to the United States." *Id.* Applicant's family returned to Afghanistan in early 2000. A few years later Applicant became a naturalized U.S. citizen.

Applicant contended at the hearing that he has not seen his family since their return to Afghanistan, even though he was deployed to that country for several years during the mid to late 2000s. Applicant testified that he had not spoken with his wife in over a year.

Applicant has made a substantial income while serving as a linguist in Afghanistan, which is virtually tax-free. He denied that he gave his family more than \$200 to \$300 every couple of months. However, "he could not or would not provide a detailed explanation of what he did with his income." *Id.* at 6.

Applicant enjoys an excellent reputation for the quality of his duty performance, his loyalty, and his trustworthiness.

Afghanistan is an Islamic Republic with a democratically elected president. Terrorist organizations within Afghanistan target U.S. and Afghan interests, and the risk of terrorist activity is extremely high. Such activity includes suicide operations, bombings, assassinations, car-jacking, assaults, and hostage taking.

In the Analysis, the Judge stated that "[i]nternational terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Afghanistan has an enormous problem with terrorism."<sup>1</sup> *Id.* at 11. He concluded that Applicant's Afghani family

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<sup>1</sup>See ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007) (In Foreign Influence cases, the presence of terrorist activity is an important consideration that provides context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case).

members and his prior service to the Afghan Government raised security concerns and that Applicant had not met his burden of persuasion as to mitigation. Among other things, the Judge noted inconsistent statements by Applicant concerning the extent of his contacts with his family. All in all, the Judge concluded that Applicant's ties to his Afghan family:

are very significant and greater than his connections to the United States. His Afghan Government employment (more than 25 years) is more significant than his employment related to the U.S. Government (four or five years). He does not have any immediate family living in the United States. His connections to the United States taken together are insufficient to fully overcome the foreign influence security concerns under Guideline B. *Id.* at 13.

Applicant has challenged the Judge's credibility determination, specifically that he had made inconsistent statements about his contact with his family. However, after examining the record, we conclude that the challenged statements by the Judge constitute a reasonable interpretation of the evidence. For example, the Judge noted Applicant's testimony that his family had moved to Afghanistan in 2000, remaining in that country thereafter. This was not consistent with an answer in his 2004 security clearance application (GE 8) in which he claimed that his wife was living with him in the U.S. at that time. Applicant has not provided a reason to disturb the Judge's credibility determination.

Applicant contends that the Judge erred in some of his findings of fact. He points out that the Judge had found that Applicant married in 1955. However, while this is an error, it appears to be merely typographical. He also stated that his wife and children had never lived in the third country prior to entering the U.S., as the Judge had found. This also appears to be an error, Applicant having testified only that his niece had lived in that country. However, these errors are harmless, in that they do not appear to have affected the outcome of the case. Viewed in light of the record as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 09-05399 at 2-3 (App. Bd. Jan. 11, 2011).

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). *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 Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan\_\_\_\_\_

Michael Y. Ra'anan  
Administrative Judge  
Chairperson, 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