

KEYWORD: Guideline B

DIGEST: Applicant's argument amounts to an alternative interpretation of the evidence and is not sufficient to demonstrate the Judge erred. Adverse decision affirmed.

CASENO: 11-00074.a1

DATE: 02/28/2012

DATE: February 28, 2012

In Re:)
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 -----) ISCR Case No. 11-00074
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)
 Applicant for Security Clearance)
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)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

James S. DelSordo, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 6, 2011, 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 December 9, 2011, after the hearing, Administrative Judge Elizabeth M. Matchinski 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 the Judge mis-weighed the evidence and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law.

The Judge made the following pertinent findings of fact: Applicant is a software engineer working for a Defense contractor. He was born in a Middle Eastern country, although his father was Libyan by birth. After his father's death, Applicant and his family moved to Libya and became citizens of that country. Through the efforts of his sibling, an official of the Libyan government, Applicant studied abroad and eventually came to the U.S. He received a degree in electrical engineering.

While in college, he attended meetings of those opposed to the political regime administered by Qadhafi. Applicant remained in the U.S. and married a U.S. citizen. After his Libyan passport expired, he made no effort to renew it. He became a U.S. citizen in the early 1990s.

A sibling of Applicant was imprisoned in Libya for political reasons, and he eventually died while a prisoner. Applicant has engaged with organizations critical of the Qadhafi regime. From time to time he had contact with various persons associated with Libya, at least some of whom possibly worked for the Libyan government. A Libyan citizen made threatening phone calls to Applicant, but the calls stopped after Applicant notified the police. He has also had contact with a person who is now with Libya's transitional government. One of the persons with whom Applicant had contact was a named individual, whom the Judge identified as "Mr. X." Although he initially believed that Mr. X shared his political views, Applicant came to believe that Mr. X posed a security risk to Applicant's family in Libya. He also believed that this person was involved in the harassing phone calls he had received.

Applicant has two other siblings who worked for Libyan-owned businesses and another sibling who owns a business in a Middle Eastern country. In addition, Applicant has a sibling-in-law who is a Libyan government official. Applicant has provided financial support to the family of his sibling who died while a prisoner.

Libya was an authoritarian state under the control of Mu'ammr al-Qadhafi, from 1969 to 2011. Under his regime, Libya committed acts of terrorism against western interests. In 2011, Libya declared itself liberated from the Qadhafi regime, following a popular uprising accompanied by military support from western democracies. Libyan affairs are currently administered by a transitional government. Various militias have assumed responsibilities formerly performed by state police, although they are poorly trained. Extremist groups continue to plan attacks against the U.S., though there have been no recent incidents in which U.S. citizens were targeted in Libya.

In the Analysis portion of the Decision, the Judge noted positive things in the record, such as Applicant's efforts to secure his brother's release from jail and his subsequent support of the brother's family. She also noted, however, that Applicant's conduct led him to contacts with persons who supported the Qadhafi regime. While Applicant dealt with threats to himself and his family appropriately, the Judge noted other conduct which called his judgment into question. She cited to evidence that Applicant maintained regular contact with Mr. X for over a year after he developed concerns over Mr. X's intentions. She also noted evidence that Applicant had made a telephone call to his Libyan family, aware that their phone lines were probably tapped. She stated that the evidence suggests "a substantial risk" that Applicant may be placed in a position to choose between the interests of his family and of the U.S.

Applicant cites to evidence which, he believes, support a favorable decision. His argument amounts to an alternative interpretation of the record. It is not sufficient to demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 08-11345 at 3 (App. Bd. Oct. 6, 2010). Applicant cites to other decisions which, he argues, support his argument that the Judge's Decision be reversed. We have given these cases due consideration. However, they are not sufficient to demonstrate that the Judge erred. *See, e.g.*, ISCR Case No. 10-02660 at 2 (App. Bd. Jun. 6, 2011). 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: Jeffrey D. Billett
Jeffrey D. Billett
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