

KEYWORD: Guideline B

DIGEST: There is a rebuttable presumption that a person has ties of affection for, or obligation to, immediate family members of the person’s spouse. Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 11-06619.a1

DATE: 05/02/2013

DATE: May 2, 2013

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**

Paula W. Phinney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 25, 2012, DoD 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 February 25, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: (1) whether the Judge failed to consider all relevant evidence submitted by Applicant; (2) whether the Judge erred in her application of

Guideline B mitigating conditions; and (3) whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found: Applicant was born in Egypt. In the early 1990s he came to the United States. He became a naturalized U.S. citizen in 2008. Applicant is married and has three children, who are U.S. citizens. Applicant's wife, who was also born in Egypt, is a naturalized U.S. citizen. Applicant and his wife own two homes in the United States. He and his wife have savings accounts in U.S. banks.

Applicant has a brother who is a citizen and resident of Egypt. Applicant maintains contact by telephone an average of once every one to two months. Applicant's three sisters are citizens and residents of Egypt. Applicant maintains some telephone contact with them. Applicant's mother-in-law is a citizen and resident of Egypt. Applicant's wife maintains phone contact with her mother weekly. Applicant's wife's brother and sister, along with their spouses, are citizens and residents of Egypt who work in Saudi Arabia. Applicant's last trip to Egypt was in 2008 when his mother died.

Applicant purchased a townhome in Egypt in 2003. He sold the home in 2011. The home was valued at \$250,000. Applicant purchased another townhome in Egypt in 2006. The home is currently valued at approximately \$250,000. Applicant is trying to sell the home. He has a bank account with a bank in Egypt because the funds from the eventual sale of the house are required by law to be deposited in an account in an Egyptian bank.

In the past, the United States and Egypt have enjoyed a strong and friendly relationship based on shared mutual interest in Middle East peace and stability. However, U.S.-Egyptian opportunities for diplomacy may be overshadowed by disruptive trends that have been unleashed by the "Arab Spring," allowing for more anti-Americanism, radical Islamist policies, and antipathy towards Israel and sectarianism. Egypt has suffered from numerous terrorist attacks over the years. Major terrorist attacks, where foreigners have either been killed or kidnapped, have occurred as recently as July 2012. Americans have been the victims of some of these terrorist attacks.

The United States and Saudi Arabia share a common concern about regional security, oil exports and imports, and sustainable development. However, Saudi Arabia's relations with the United States were strained after the September 2001 terrorist attacks. A travel warning is in effect for Saudi Arabia due to concerns about the possibility of terrorist activity directed against American citizens and interests.

The Judge concluded: Security concerns are raised by Applicant's relationships with his family members who are living in Egypt and Saudi Arabia as well as his property interests in Egypt. Security considerations under Guideline B are not limited to countries hostile to the United States. The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government

coercion. Record evidence places a burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Egypt and Saudi Arabia do not pose a security risk.

Applicant's communications with his relatives in Egypt are frequent. Applicant's wife maintains a close relationship with her mother. Applicant acquired property in Egypt in the form of a townhome and a bank account. Because of these factors, along with the geopolitical context of the foreign countries involved, there is an increased possibility that Applicant's family and his monetary ties to Egypt could become a means through which Applicant could be coerced.

Applicant argues that the Judge erred by failing to consider all relevant evidence submitted by him. However, Applicant does little more than make a blanket assertion that the presumption that the Judge has considered all the evidence is effectively rebutted when the record clearly demonstrates that the Judge failed to consider all relevant and material information. Applicant does not provide any detail whatsoever regarding what evidence the Judge disregarded. An appealing party must set forth its claims of error with specificity. *See, e.g.*, ISCR Case No. 00-0429 at 2 (App. Bd. Jul. 9, 2001). Having failed to do this, Applicant's argument is not persuasive. The Board finds no reason to believe that the Judge did not properly weigh the evidence or that she failed to consider all the evidence in the record. *See, e.g.*, ISCR Case No. 11-06622 at 4 (App. Bd. Jul. 2, 2012).

Applicant argues that the Judge erred by not applying Guideline B mitigating conditions in his favor. He states that he is so firmly rooted in the United States and his U.S. connections are so much stronger than any ties or connections to Egypt, that mitigating condition ¶ 8.(b)<sup>1</sup> applies. He also argues that mitigating condition 8.(f)<sup>2</sup> should apply since Applicant maintains a bank account in Egypt solely to facilitate mortgage payments and eventual sale of his property, which makes the financial interest routine in nature. The Board has considered the totality of Applicant's arguments on appeal and finds no error in the Judge's ultimate conclusions regarding mitigation.

Applicant asserts that the Judge erred by concluding that he had not fully rebutted the presumption that he had ties of affection for, or obligation to, the immediate family members of his wife. He states that while his wife's siblings do communicate with her, he merely says hello during phone conversations out of politeness. This argument overlooks the fact that because of his relationship with his wife, the closeness of her ties to her immediate family can be attributed to Applicant as well. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. *See, e.g.*, ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002).

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<sup>1</sup>“[T]here is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest[.]”

<sup>2</sup>“[T]he value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.”

In support of his appeal, Applicant points to decisions by the Hearing Office which he argues support his request for a favorable determination. The Board gives due consideration to those cases. However, each case “must be decided upon its own merits.” Directive, Enclosure 2 ¶ 2(b). Nothing in the decisions cited by Applicant demonstrate error on the part of the Judge in this case.

After reviewing the record, the Board concludes 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 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 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