

KEYWORD: Guideline B

DIGEST: Applicant challenges the Judge's conclusion that the absence of evidence about his younger sibling in Pakistan hinders the application of pertinent mitigating conditions. He argues that he did not provide such information at the hearing because he was trying to minimize his relationship with his sibling in order to reduce foreign influence concerns. In his brief, he relates information that he obtained from his parents about his sibling that is not in the record. Such information constitutes new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29. Based on our review of the record, Applicant has failed to establish that the Judge erred in concluding that the security concerns involving his parents and younger sibling were not mitigated. Adverse decision affirmed.

CASENO: 17-04194.al

DATE: 05/20/2019

DATE: May 20, 2019

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 3, 2018, 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 March 29, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel 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 erred in her findings of fact and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant, his wife, his parents, and his three siblings are naturalized U.S. citizens originally from Pakistan. Applicant and his wife have renounced their Pakistani citizenship and have no intention of returning there. He has almost \$400,000 in assets in the U.S., including a home.

Applicant’s parents and two of his siblings reside in the United States. For an unspecified period, his parents divided their time between the United States and Pakistan after retiring. It is not clear when his parents began and ended that practice. They maintain a home in Pakistan that they intend to leave to Applicant’s younger sibling. In 2009, the younger sibling returned to Pakistan and currently resides there. Applicant has not had any contact with his younger sibling since he returned to Pakistan and considers his estrangement from this sibling permanent. His parents maintain contact with their child in Pakistan.

Applicant’s brother-in-law is a citizen and resident of Pakistan. He is currently in a school and is attempting to immigrate to the United States. Applicant’s mother-in-law is a permanent U.S. resident who returned to Pakistan in mid-2018 to wrap up family affairs, including selling the family home.

Terrorist groups operate in Pakistan and may attack public places without warning. They have targeted U.S. citizens. Citing terrorism, the U.S. State Department warns U.S. citizens to reconsider traveling to Pakistan.

The Judge’s Analysis

The evidence establishes that Applicant’s relationship with his parents, younger sibling, mother-in-law, and brother-in-law creates a heightened risk of foreign exploitation, inducement, etc. His relationship with his parents and younger sibling also presents a potential conflict of interest with his obligation to protect classified information. Applicant mitigated the security concerns involving his in-laws, but failed to mitigate those concerns arising from his parents and younger sibling. Although Applicant is estranged from his younger sibling, their family ties are not entirely broken. The parents remain a influence in the lives of Applicant and his younger sibling. Noting that

Applicant did not ask his parents for information about the younger sibling’s current circumstances, the Judge stated, “The absence of information about Applicant’s [younger sibling], and the extent of their parent’s relationship with [that sibling], prevents application of any of the foreign influence mitigating conditions to this relationship.” Decision at 6.

Discussion

As a preliminary matter, Applicant’s brief discusses Guideline language that has not been applicable for more than a decade. We will not speculate why he relies on inapplicable guidelines.

Applicant challenges the Judge’s finding that the evidence is not clear when his parents stopped the practice of spending part of each year in Pakistan. He argues that he submitted an affidavit (Applicant’s Exhibit CC) that “clearly states they have stopped this practice.” Appeal Brief at 1. In pertinent part, the affidavit states “for the past few years” his parents have been spending part of the year in Pakistan, but it does not specify when that practice ended. Consequently, the affidavit does not undermine the Judge’s challenged finding, but rather supports it.

In his appeal brief, Applicant highlights a number of facts from his security clearance application, testimony, and background investigation. By doing so, he has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-01717 at 4 (App. Bd. Jul. 3, 2017).

Applicant challenges the Judge’s conclusion that the absence of evidence about his younger sibling in Pakistan hinders the application of pertinent mitigating conditions. He argues that he did not provide such information at the hearing because he was trying to minimize his relationship with his sibling in order to reduce foreign influence concerns. In his brief, he relates information that he obtained from his parents about his sibling that is not in the record. Such information constitutes new evidence that the Appeal Board is prohibited from considering. Directive ¶E3.1.29. Based on our review of the record, Applicant has failed to establish that the Judge erred in concluding that the security concerns involving his parents and younger sibling were not mitigated.

The balance of Applicant’s arguments amount to a challenge of the Judge’s weighing the evidence. These arguments are not enough to show the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-01717, *supra*, at 4.

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. *See also* Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board.