

KEYWORD: Guideline C; Guideline B

DIGEST: Guideline B cases should be resolved to the greatest extent possible in the context of the current political conditions in the country at issue. The Judge's failure to make any factual findings about the situation in Nigeria vitiates the credibility of her decision. Favorable decision remanded.

CASENO: 06-17001.a1

DATE: 07/24/2007

DATE: July 24, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-17001
SSN: -----)	
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 3, 2006, DOHA issued a statement of reasons advising Applicant of the basis

for that decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 29, 2006, after the hearing, Administrative Judge Darlene Lokey Anderson granted Applicant’s request for a security clearance. Department Counsel filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.¹

Department Counsel raised the following issues on appeal: whether the Judge’s application of Foreign Influence Mitigating Condition (FIMC) 1² is not supported by record evidence and therefore arbitrary, capricious, and contrary to law; and whether the Judge’s whole person analysis is not supported by record evidence and therefore arbitrary, capricious, and contrary to law. Finding error, we remand the case to the Judge.

Department Counsel implicitly challenges the sufficiency of the Judge’s findings in his argument that the Judge’s failure to make findings of fact concerning the geopolitical situation in Nigeria impairs her analysis of FIMC 1 as well as of the whole person. Department Counsel contends that such record evidence as “the deteriorating security situation in Nigeria,” human rights abuses, and government corruption raise security concerns which the Judge’s decision fails adequately to address.

Department Counsel’s argument is persuasive. “Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.” ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007). The Judge’s failure to make any factual finding at all about the political situation in Nigeria vitiates the credibility of her favorable decision. Therefore, we remand the case to the Judge for a new opinion. The new opinion should include a more detailed analysis under both Guideline B and the “whole person,” which explicitly takes into account the situation existing in Nigeria insofar as it has a bearing on Applicant’s eligibility to hold a clearance. Further, it should, as appropriate, detail and explain Applicant’s pertinent qualities, characteristics, and circumstances which are the basis for the Judge’s ultimate decision. The other issues raised on appeal are not ripe for consideration.

¹The Judge’s favorable decision under Guideline C is not at issue in this appeal.

²Directive ¶ E2.A2.1.3.1: “A determination that the immediate family member(s) . . . in question are not agents of a foreign power or in a position to be exploited by the foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States ...”

Order

The Judge's decision granting Applicant a clearance is REMANDED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board