

KEYWORD: Guideline B; Guideline E

DIGEST: Applicant has supplied insufficient evidence to overcome the rebuttable presumption that he has ties of affection or obligation the immediate family members of his spouse in Afghanistan. Favorable decision reversed.

CASENO: 12-07647.a1

DATE: 11/07/2013

DATE: November 7, 2013

In Re:)
)
)
-----) ISCR Case No. 12-07647
)
)
Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 9, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On June 28, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge’s application of the mitigating conditions was erroneous and whether the Judge’s whole-person analysis was erroneous. The Judge’s favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we reverse.

The Judge’s Findings of Fact

Applicant is an employee of a Defense contractor. Born and raised in Afghanistan, he is married to a permanent resident alien of the U.S. He has five children, two of whom were born in another middle-eastern country and are naturalized citizens of the U.S. His other children are natural-born citizens of the U.S.

In addition to his wife, who is a citizen of Afghanistan, Applicant’s mother-in-law is a citizen and resident of that country. He has a brother-in-law, who is a citizen of Afghanistan and a resident of another middle-eastern country. Applicant’s wife contacts her mother three to four times a year by telephone. Applicant owns property in Afghanistan. Applicant states that his share is worth about \$10,000. He acquired this property by inheritance from his father.¹

The Judge noted Administrative Notice documents concerning Afghanistan. He found that the country has a poor human rights record and that militant, extremist groups such as Al Quaida and the Taliban are present there, openly attacking the police, military forces, local citizens, and U.S. persons and interests.

The Judge’s Analysis

¹Applicant’s information about this property is somewhat conflicting. The Judge quoted Applicant’s answer to a Counterintelligence-Focused Security Screening Questionnaire, to the effect that he owned 10 acres of land in Afghanistan, worth about \$1,000,000. The answer stated that Applicant was unsure about what to do with the land. In a clearance interview, Applicant stated that the land was worth \$10,000 and that he maintained the land because it had been in the family for a long time. Finally, in Applicant Exhibit A, a statement Applicant submitted in response to the FORM, he stated that his share of the property was worth \$10,000. The Judge concluded that he could not find with any degree of certainty that the land was worth \$1,000,000. “In all probability it is worth much less.” Decision at 4.

The Judge concluded that Applicant's connections within Afghanistan raised security concerns under Guideline B.² In resolving these issues in Applicant's favor, the Judge stated that Applicant's ties to Afghanistan are minimal, that he has no immediate family there, that his relationships with his mother-in-law and brother-in-law are of minor importance to him, and that the facts concerning his property, though confusing, are not such as to be of current security significance. In the whole-person analysis, the Judge found little or no "potential for pressure, coercion, exploitation, or duress." Decision at 10.

Discussion

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions "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). "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

In deciding whether the Judge's rulings or conclusions are erroneous, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Department Counsel argues that the Judge's favorable findings under Guideline B are not supported by the evidence. We find this argument to be persuasive.

The Judge properly concluded that the Government had presented substantial evidence that Applicant's family connections with, and property interest in, Afghanistan raised Guideline B concerns. Having so concluded, it was the Judge's task to evaluate whether Applicant had met his burden of persuasion under the *Egan* standard. Regarding the issue of Applicant's property, we note the Judge's characterization of the evidence as confusing, which was reasonable, given the record that was before him. The Judge's finding that Applicant's property holding was probably worth

²The Judge found that three Guideline B disqualifying conditions applied: Directive, Enclosure 2 ¶ 7(a): "contact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;" 7(b): "connections to a foreign person . . . that create a potential conflict of interest between the individual's obligation to protect sensitive information . . . and the individual's desire to help a foreign person, group, or country by providing that information;" and 7(e): "a substantial business, financial, or property interest in a foreign country . . . which could subject the individual to heightened risk of foreign influence of exploitation[.]"

significantly less than \$1,000,000 was not sufficient to resolve this confusion, given the Judge's application of 7(e) to the effect that, whatever its value, the property holding was substantial and created a heightened risk of exploitation. *See* note 2, *supra*. The Judge's conclusory statement that the property was not of security significance was not based upon an analysis of any evidence that would effectively mitigate his conclusion that 7(e) applied.

Concerning Applicant's Afghani relatives, in-laws are a class of persons who can present a security risk. "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." ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011) (internal citation omitted). As Department Counsel argues, Applicant has supplied insufficient evidence to rebut this presumption. On this record, when Applicant's property interests and family connections are evaluated alongside evidence that terrorist organizations operate in Afghanistan,³ it is not reasonable to conclude that Applicant has met his burden of persuasion or that the Judge has resolved all doubt in favor of the national security, regarding either the mitigating conditions or the whole-person factors. *See, e.g.*, ISCR Case No. 07-13175 (App. Bd. Jan. 12, 2009).

Order

The Decision is **REVERSED**.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

³*See, e.g.*, ISCR Case No. 12-05609 at 2 (App. Bd. Sep. 4, 2013) ("The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases.")