

KEYWORD: Guideline B

DIGEST: The Judge is presumed to have considered all the evidence. He is not required to cite or discuss every piece of record evidence. Adverse decision affirmed.

CASENO: 07-04242.a1

DATE: 10/07/2008

DATE: October 7, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-04242
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

James N. Apostle, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 28, 2007, 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 June 24, 2008, after the hearing, Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s findings of fact are supported by substantial record evidence; whether the Judge erred in his application of the pertinent mitigating conditions; and whether the Judge erred in his whole person analysis. Finding no error we affirm.

The Judge made the following pertinent findings of fact: Applicant is a 52-year-old linguist for a defense contractor. Born and raised in Sudan, he worked for a civilian business in that country. He immigrated to the U.S. in the 1980s, becoming a U.S. citizen soon thereafter. He retains dual citizenship with Sudan.

Applicant has five siblings who are citizens of Sudan. One lives in a European country and recently became a citizen of that country. Another lives and works in a middle eastern country. The remaining three reside in Sudan. Applicant has weekly to monthly contact with his siblings. He is married to a Sudanese woman who recently became a U.S. citizen. Applicant and his wife have three children. His parents-in-law are Sudanese citizens residing in another country. Applicant’s wife maintains regular contact with them (about two times a month) and Applicant speaks with them himself upon occasion. Applicant’s wife has six siblings who reside in Sudan. She has other siblings residing in other countries. She has monthly contact with her siblings in Sudan.

The U.S. State Department has designated Sudan as a state sponsor of terrorism. It is the subject of trade restrictions. Sudan has committed numerous human rights violations, and United Nations peacekeepers report systematic rape of women and children in the Darfur region. Other violations include arbitrary arrest and detention, denial of due process, and trafficking in persons.

The Judge’s material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.”) To the extent that the Judge’s findings contain error, the Board concludes that such error is harmless. For example Applicant argues that the Judge erred in stating that Applicant pays \$500.00 to his siblings living in Sudan. This finding appears to have been based, at least in part, on Government Exhibit 2, Personal Subject Interview, at 5: “Subject noted that he sends his siblings money to help out every month. Subject noted that he sends \$500.00 a month total.” Applicant points to his testimony that he had stopped sending the money after his siblings married. Tr. at 43. However, even if the Judge had made a finding on this matter consistent with Applicant’s testimony at the hearing, such a finding would not likely have resulted in a favorable

security clearance decision when viewed in light of the record as a whole. *See* ISCR Case No. 06-23112 at 2 (App. Bd. Dec. 31, 2007).

Applicant contends that the Judge erred by not assigning sufficient weight to matters he believes favorable to his case, for example that his siblings live in a part of Sudan that enjoys relative security. However, “[a]n applicant’s disagreement with the Judge’s weighing of the evidence . . . is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.” *See* ISCR Case No. 07-10454 at 2 (App. Bd. Aug. 12, 2008). Furthermore, the “Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. He is not required to cite or discuss every piece of record evidence.” *See* ISCR Case No.07-04504 at 4 (App. Bd. Jul. 31, 2008)(internal citations omitted).

In light of the record as a whole, the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision, both as regards the mitigating conditions and the whole-person factors. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also 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 decision that “it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance” is sustainable on this record. Decision at 12. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security’”). *See also* ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007) (In Guideline B cases, the presence of terrorist activity in the country involved, as well as the country’s human rights record, are important considerations which “must be brought to bear on the Judge’s ultimate conclusions in the case”).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board