

KEYWORD: Guideline B; Guideline E

DIGEST: The Judge made sustainable findings regarding Applicant's extensive ties to India which support the Judge's adverse conclusions. Adverse decision affirmed.

CASENO: 07-07976.a1

DATE: 01/15/2009

DATE: January 15, 2009

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In Re:)	
)	
-----)	ISCR Case No. 07-07976
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Richard Murray, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On January 14, 2008, DOHA 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 hearing. On October 14, 2008, after the hearing, Administrative Judge Juan J. Rivera 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 issue on appeal: whether the Judge erred in his application of the Guideline B mitigating conditions.¹ Finding no error, we affirm.

The Judge found that Applicant was born in India. He was educated at Indian and U.S. universities, and he became a U.S. citizen in the mid-1990s. His wife was born and raised in India. At the close of the record she was a citizen of India and a legal resident of the U.S. Applicant has two brothers, one a citizen of India and the other a recently naturalized citizen of Singapore. The remainder of Applicant’s and his wife’s immediate families are citizens and residents of India.

From the early 1980s until the mid-1990s, Applicant traveled to India four times. Since then, however, he has traveled there more frequently due to his mother’s health. For approximately six years he and his family lived in India, caring for his mother. Additionally, Applicant and his wife have established several companies to take advantage of U.S. and Indian markets. Applicant established the U.S. side of the businesses and his wife the Indian side. From the late 1990s to the mid-2000s, Applicant was CEO and director of an Indian company founded by his wife. “A brochure from Applicant’s wife’s company . . . identified Applicant as a ‘professional in India’ working for his wife’s company and listed Applicant’s personal contact information in India, including a physical address, e-mail address, and telephone number.” Decision at 3. He was also “chairman and advisor of an Indian institute, a business established by his wife in India . . .” Although he is severing all ties with this organization, he acts as chairman in his wife’s absence. *Id.* at 4. Additionally, Applicant is owner and CEO of a U.S. company that has registered an Indian company owned by Applicant’s wife in the U.S. His wife owns and directs an Indian software developing company with a marketing office in the U.S. Applicant and his wife own apartments in India. Additionally, he owns the home of his parents following their deaths. The total value of Applicant’s Indian real estate holdings is \$409,000.00.

During his trips to India, Applicant acted as a spokesperson for a U.S. national association of businessmen seeking to extend their outreach to India, though Applicant has taken steps to distance himself from this association.

¹During the hearing Department Counsel stated that the Government would not pursue the Guideline E allegations. Accordingly, the Judge’s favorable findings under this guideline are not at issue.

India is a democratic republic and a strategic partner of the U.S. The U.S. is India's largest trading and investment partner. However, India is increasingly cooperating with Iran and is an active collector of U.S. economic, industrial, and proprietary information.

The Board concludes that the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision, both as regards the Guideline B 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)). Applicant points to a recent case in which the Board remanded a decision to the Judge in order to resolve apparent discrepancies between certain language in the decision and the ultimate adverse holding. *See* ISCR Case No 07-04281 (App. Bd. Oct. 28, 2008). Applicant argues that similar language in his decision constitutes error and requests that the Board remand the case to the Judge for further proceedings. However, the decision as a whole, including the Judge's extensive unchallenged findings of fact, support his adverse security clearance determination. Furthermore, Applicant takes issue with the Judge's weighing of certain pieces of evidence, for example concerning the "value or routine nature" of Applicant's Indian business interests. *See* Directive ¶ E2.8(f). However, "[A]n applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation 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)

Accordingly, the Board holds that the Judge's decision that "it is not clearly consistent with the national interest to grant Applicant's security clearance" is sustainable on this record. Decision at 12. *See also 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'").

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, 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