

KEYWORD: Guideline B

DIGEST: The political prominence of Applicant's family including their execution by terrorists (along with Applicant's own history of visibility) could persuade a reasonable person that Applicant may come to the attention of forces that could attempt to pressure Applicant. Adverse decision affirmed.

CASENO: 12-05231.a1

DATE: 07/25/2014

DATE: July 25, 2014

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In Re:)	
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-----)	ISCR Case No. 12-05231
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)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Cathryn E. Young, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 3, 2012, 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 April 30, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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’s application of the mitigating conditions was erroneous and whether the Judge’s whole-person analysis was erroneous. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant requires a security clearance in connection with his employment by a Defense contractor. Born in Afghanistan, Applicant attended college there. He served in the Afghan military for six months. He also worked at a university and subsequently in a position of responsibility in another sector.¹

After the Soviet invasion of Afghanistan, Applicant attempted to escape the country but was forcibly returned. He later attempted a second escape and was imprisoned. The gravamen of the Judge’s findings of security concern are that Applicant had two siblings who were officials of the government that were killed by the Taliban. Additionally, Applicant made the acquaintance of a senior member of rebel forces who facilitated his eventual escape from Afghanistan. By the time his siblings were killed, Applicant had made his way to the U.S. He became a U.S. citizen a few years prior to the date of the SOR.

Applicant has no living family members in Afghanistan. He enjoys an excellent reputation for the quality of his duty performance, trustworthiness, and dependability. His performance appraisals rate him as having exceeded expectations, and he has received awards and accolades from his job.

Afghanistan is an Islamic Republic. After the terrorist attacks of 2001, the Taliban was deposed. However, the country still experiences challenges, including the presence of terrorists and insurgents. The U.S. State Department has declared that all U.S. citizens in Afghanistan are unsafe due to combat operations, rivalry among various tribal groups, and possible attacks by terrorists.

The Judge’s Analysis

¹The record contains evidence that these positions were governmental in nature. Government Exhibit (GE) 4, Interview Summary, dated August 22, 2011, at 3, 15. *See also* GE 5, Interview Summary, dated September 9, 2011, at 1: Regarding both positions, Applicant “was a citizen of Afghanistan working for the government of Afghanistan.” Applicant worked at the second of these two positions for about nine years. GE 4 at 3.

The Judge concluded that unique features of Applicant’s circumstances—evidence of the notoriety his siblings and his family—placed him in a “heightened risk” of retaliation, coercion, or pressure. She concluded that, under the facts of this case, the absence of living relatives of Applicant in Afghanistan is not material. She stated that the political climate of Afghanistan, combined with the high-visibility of Applicant’s late relatives, could subject him to possibly having to choose between his own interests and those of the U.S. In the whole-person analysis, the Judge acknowledged the positive evidence Applicant supplied, but she concluded that the totality of circumstances support an assessment of poor judgment, unreliability, or other characteristics that indicate that he may not properly safeguard classified information.

Discussion

Applicant’s challenge to the Judge’s mitigation analysis is based in part upon evidence that Applicant has no living family members in Afghanistan. While this is, of course, significant evidence, the Judge explained why she nevertheless decided the case against Applicant. She relied in large measure upon evidence of the prior political visibility of Applicant’s siblings and their execution by terrorist forces still operative in Afghanistan. This evidence (along with other evidence not cited by the Judge, such as Applicant’s own prior visibility in Afghanistan) could persuade a reasonable person that Applicant could come to the attention of forces in that country that are hostile to the U.S. and that could attempt to pressure Applicant to reveal classified information. Applicant’s argument on appeal is not sufficient to establish that the Judge failed to consider the mitigating evidence in the record or that she mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-06649 at 3 (App. Bd. Feb. 21, 2014).² The prominence of foreign relatives is a factor to be weighed in Guideline B cases. *See, e.g.*, ISCR Case No. 09-06457 at 3-4 (App. Bd. May 16, 2011).

Applicant takes issue with the Judge’s whole-person analysis. We note the language summarized above, in which the Judge stated that Applicant may have poor judgment or be unreliable, traits that, in other contexts, could suggest a character flaw. In this case, however, the evidence demonstrates that Applicant has shown courage, resourcefulness, and other positive qualities during the course of his life, and the Judge noted this in her Decision. The Judge appears to be saying that Applicant’s unique history could place him in a situation that would impair the judgment of a reasonable person. This is consistent with the evidence that was before her. Applicant’s brief cites to the abundant evidence of his good duty performance and service to U.S. interests. The Judge made detailed findings about the evidence cited by Applicant and discussed

²Applicant’s brief includes arguments to the effect that his circumstances do not create a heightened risk of coercion and, therefore, do not raise concerns under Guideline B. We note that the Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security worthiness. *See, e.g.*, ISCR 11-06925 at 4 (App. Bd. Dec. 13, 2013). Given the totality of circumstances in this case, we conclude that the presumption of nexus is appropriate and that Applicant’s familial and personal history in Afghanistan are sufficient to raise concerns under Guideline B. *See* Directive, Enclosure 2 ¶ 6: “Foreign contacts . . . may be a security concern if the individual . . . is vulnerable to pressure or coercion by any foreign interest.”

it in her analysis of his case. We find no reason to believe that the Judge failed properly to conduct a whole-person analysis that considered the totality of the evidence in the record. *See, e.g.*, ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). *See also* ISCR Case No. 02-28891 at 4 (App. Bd. Apr. 22, 2004) (“Applicant’s security eligibility does not turn on the Judge’s findings and conclusions with respect to any one paragraph of the SOR . . . but rather on the Judge’s findings and conclusions about the overall facts and circumstances” of the applicant’s history).

Applicant has cited to three Hearing Office decisions that address Guideline B concerns and that resulted in grants of clearances. He argues that these cases are qualitatively similar to his own and support his case for a clearance. We give these cases due consideration as persuasive authority. However, each case must be decided on its own merits. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 13-00464 at 3 (App. Bd. Feb. 20, 2014). We have considered particularly Applicant’s contentions regarding factual similarities between the cited cases and his own. The cited cases do have significant differences from Applicant’s. Moreover, Applicant submitted copies of these cases to the Judge as part of his evidence in mitigation, which she is presumed to have considered along with all of the other evidence in the record. Implicit in her adverse decision is a conclusion that these cases are distinguishable from Applicant’s. We do not find in these cases a reason to reverse the Judge’s decision.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information 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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board