

KEYWORD: Guideline B; Guideline E; Guideline F

DIGEST: The Judge’s challenged finding about Applicant’s foreign passport were based on her clearance interview. The Judge’s analysis is sustainable. Adverse decision affirmed.

CASENO: 13-12407.a1

DATE: 08/18/2014

DATE: August 18, 2014

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 30, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline E (Personal

Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 5, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 certain of the Judge's findings of fact were in error and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

The Judge found that Applicant was born in the U.S. to Nigerian parents. In the early 1980s the family moved back to Nigeria. Applicant's parents obtained a Nigerian passport for her. She attended secondary school in Nigeria, returning to the U.S. when she was 16. She has lived here ever since.

In 2002, Applicant completed a security clearance application (SCA) in which she denied holding a foreign passport or foreign citizenship. In 2013, she completed another SCA. Although she divulged that Nigeria had issued her a passport in 2012, she denied holding dual citizenship. In a 2013 clearance interview, she stated that she did not hold Nigerian citizenship. In her testimony, she stated that, at the time, she had not understood the meaning of dual citizenship. The Judge found her explanations not to be credible.

During the 2013 interview, she stated that, between the early 1990s and 2011, she had used her Nigerian passport 8 to 10 times to travel to Nigeria. She stated that she had always used her foreign passport in traveling to that country. She subsequently adopted the investigator's summary as an accurate reflection of her answers during the interview. Applicant did not retract her statements until after receipt of the SOR. At the hearing she testified that her answers to the investigator were not complete because she did not have certain documentation of her travel available during the interview. She stated that she had not held an active Nigerian passport when she completed her 2002 SCA, only renewing it in the mid-2000s. She stated that she had used the foreign passport for trips to Nigeria beginning in the mid-2000s until she surrendered the passport to her security officer several years later. She provided no corroboration of her testimony about a more limited use of the foreign passport. "Her contradictory statements indicate that she has not been fully forthright with the government concerning her possession and use of her Nigerian passport." Decision at 5.

In addition, Applicant has two delinquent debts, in the amount of nearly \$300,000. These debts arose from a piece of real estate she had bought for the purpose of generating rental income. She financed the purchase with a mortgage and a home equity line of credit. Unfortunately, rental income from the property became inadequate to cover her costs. In addition, her tenants stopped paying rent. After they finally vacated, Applicant discovered that they had caused \$25,000 worth

of damage, which she could not afford to repair. She let the house sit vacant and stopped making mortgage payments. She tried to refinance the property and, alternatively, offered the bank a deed of trust in lieu of foreclosure. She subsequently received notice from the city that the house was a safety hazard. In late 2013, the city sold the house for \$20,000. Her lending institution was not aware of this sale until recently. Applicant's financial statement shows a monthly surplus of \$206. However, a proposed budget analysis by a consumer credit counseling service showed that her expenses exceeded her income by over \$1,000. She failed to explain this discrepancy.

### **The Judge's Analysis**

In examining the false statements alleged under Guideline E, the Judge noted that Applicant was well educated and articulate. Accordingly, the Judge found that her claims not to have understood the meaning of dual citizenship were not persuasive. The Judge also noted that Applicant used her Nigerian passport as a reference during her clearance interview. She concluded that Applicant had deliberately provided false answers to her SCAs. The Judge further concluded that Applicant had failed to mitigate that concerns arising from her omissions and false statements. She stated that Applicant had not made good-faith efforts to correct the false statements and provided no evidence to show that she had been acting on poor advice in completing her SCA. The Judge stated that falsifying information during the clearance adjudication process is serious and that Applicant had presented nothing to show that her misconduct would not occur again. Under Guideline F, the Judge noted evidence that Applicant's mortgage delinquencies were affected by circumstances outside her control. However, she noted evidence that Applicant had failed to maintain the property, and the city sold it for much less than Applicant owes on the mortgage notes. As a consequence, Applicant's debts are now unsecured, and she has no concrete plan to address them. The Judge found that none of the mitigating conditions can be given favorable application in this case. She stated that Applicant has no concrete plan to resolve her debts, that her financial problems are ongoing, and that there are no indications that the problems are under control, despite Applicant's receipt of financial counseling. She stated that Applicant's decision to walk away from her mortgage debt evidenced poor judgment and reliability.

### **Discussion**

Applicant challenges some of the Judge's findings of fact. She denies that she had held a Nigerian passport at the time she completed her 2002 SCA. She also denies that she had intentionally falsified her SCAs. We evaluate a Judge's findings to see if they are supported by substantial evidence. In evaluating an applicant's intent, a Judge should examine the false statements or omissions in light of the entire record. *See, e.g.*, ISCR Case No. 12-12172 at 3 (App. Bd. Jan. 9, 2014). The findings about Applicant's continued possession of a Nigerian passport were based in large part upon Applicant's clearance interview, which was detailed, internally consistent, and inherently credible.<sup>1</sup> Given the evidence as a whole, a reasonable person could interpret

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<sup>1</sup>"Between the years 1993 to 2011, she has used this foreign passport 8 - 10 times to travel to and from Nigeria . . . Subject reports that she has always used her foreign passport when traveling to Nigeria, and was advised by her parents that it would be safer for her to use her Republic of Nigeria passport . . . not only for ease of travel, as she is able

Applicant’s hearing testimony as a recent fabrication. A Judge’s task includes resolving conflicts in evidence, and we give deference to a Judge’s credibility determinations. Directive ¶ E3.1.32.1. The Judge’s analysis of Applicant’s intent is supportable. It was proper for the Judge to consider Applicant’s inconsistent statements and other evidence, such as her educational attainments and the timing of her retractions, along with her demonstrated facility with the English language. The multiple nature of the false statements could persuade a reasonable person that they were deliberate. We find no reason to disturb the Judge’s findings. Her material findings are based upon substantial evidence or constitute reasonable inferences or conclusion that could be drawn from the evidence.

Regarding Guideline F, Applicant asserts that she acted responsibly with regard to her delinquent mortgages, that the Judge erred when concluding that her expenses exceeded her income, and that the Judge erred when concluding that she did not have a current plan to address her debt delinquencies. After reviewing the record, we conclude that the Judge’s findings and her ultimate resolution of the Guideline F allegations are sustainable.

Applicant’s challenges to the Judge’s overall adverse holding consist essentially of disagreements with the Judge’s weighing of the evidence. Such disagreements are not sufficient to demonstrate that the Judge reached conclusions that were arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 12-00703 at 3 (App. Bd. Feb. 27, 2014). 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

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to enter Nigeria without having to obtain a visa, or appear to be a tourist, and that it is best to protect her U.S. issued passport . . . Subject . . . recently renewed her Nigerian passport . . . ” Clearance Interview Summary, included in Government Exhibit 4, Answers to Interrogatories.

Administrative Judge  
Member, Appeal Board

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