

KEYWORD: Guideline B

DIGEST: The Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant’s eligibility for a clearance. Applicant did not rebut the presumption that the Judge considered all of the evidence. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. Adverse decision affirmed.

CASE NO: 14-05251.a1

DATE: 10/05/2015

DATE: October 5, 2015

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In Re:)	
-----)	ISCR Case No. 14-05251
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 14, 2015, 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 July 27, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal: Born and educated in India, Applicant came to the U.S. in the late 1990s and became a U.S. citizen a little over a decade later. His wife, also born in India, is a naturalized U.S. citizen as well. Applicant's parents, parents-in-law, and sibling are citizens and residents of India. Applicant communicates with his parents weekly, his in-laws once or twice a month, and his sibling once or twice a year. Applicant's wife communicates with her parents once or twice a month. Applicant's father is retired from a job with the Indian government. Applicant travels to India every two years, staying three to four weeks at a time.

Applicant and his wife own several pieces of real estate in India. One such property was provided by Applicant's father. Applicant intends to hold on to this property until his children are ready to go to college, at which point he will sell it to pay their education expenses. Applicant's wife has a certificate of deposit in that country, and, until recently, Applicant had a bank account there as well. The total value of Applicant's and his wife's holdings in India is about \$150,000.

Applicant enjoys an excellent reputation for the quality of his work performance, honesty, trustworthiness, etc. He has received several awards from his employers. There is no evidence that he has abused alcohol, used or possessed illegal drugs, violated security rules, or committed criminal offenses.

India is a parliamentary democracy that shares significant strategic interests with the U.S., including counter-terrorism cooperation. The two countries have increased trade in goods and services, cooperate on nuclear policy, and engage in mutual efforts to address pollution and climate change. On the other hand, India is an avid collector of U.S. proprietary information, and there have been several criminal cases of industrial espionage arising out of India, both from private sources and from the government itself. Terrorist activity occurs in India, and the country is one of those most persistently targeted by foreign and domestic terrorist groups. India has some significant problems with human rights. India has good diplomatic relations with Iran and supports that country's efforts to develop nuclear energy for peaceful purposes. India's largest supplier of military systems and spare parts is Russia.

The Judge's Analysis

The Judge resolved the SOR allegations regarding Applicant's Indian family members and his property holdings in India against him.¹ He concluded that Applicant's connections to his family there are "significant," citing to Applicant's frequent communication with them. Decision at 14.

¹Other allegations addressed friends living in India and Applicant's Indian bank account. The Judge resolved these allegations favorably to Applicant.

He also noted evidence that Applicant travels to India every other year and that his father is living on a pension from the Indian government. The Judge stated that Applicant's primary issue of security concern is his property holdings in India.

Although the Judge noted favorable evidence, such as Applicant's good job performance, clean security record, and excellent reputation, he also noted that India is a country beset with terrorists who threaten the U.S. and other countries that cooperate with it. The Judge stated that Applicant's close family connections in India, as well as his property interests there, render him vulnerable to those who may seek U.S. information.

Discussion

Applicant argues that his circumstances do not raise security concerns. However, there is a presumptive nexus between admitted or proven circumstances under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). In this case, Applicant's admissions to the SOR, along with the evidence adduced at the hearing and the official notice matters that the Judge incorporated into the record, show that Applicant has close relatives, with whom he frequently communicates, living in a country that practices industrial espionage against the U.S. and within which terrorist groups operate with great frequency. This evidence, and the findings that are based upon it, support the Judge's conclusion that Applicant could find himself in a conflict of interest between his desire to assist his relatives in India and his duty to protect classified information. Applicant's brief provides no reason to rebut the presumption of nexus. *See* Directive, Enclosure 2 ¶ 7(b).²

Applicant argues that the Judge did not consider all of the evidence in the record, citing to his character references as well as to what he characterizes as the "casual" nature of his Indian connection and his intent to sell his Indian property in order to fund his children's education. The Judge made findings about the matters that Applicant has cited. Applicant has not challenged the sufficiency of the Judge's findings about Applicant's communication with his foreign relatives, only the conclusion that such communications are frequent. However, this conclusion is consistent with the record that was before the Judge. A reasonable person could find that communications that occur on a weekly or monthly basis are frequent. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255, *supra*.

Applicant's brief cites to other cases that, he contends, are similar to his and that support his effort to get a clearance. We have given these cases due consideration as persuasive authority. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 11-10178 at 3 (App. Bd. Aug. 29, 2013). Applicant's argument consists in essence of a disagreement with the Judge's weighing of the evidence, which is not

²"[C]onnections to a foreign person . . . that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information."

sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00173 at 3 (App. Bd. Aug. 8, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. In Foreign Influence cases, the nature of the foreign government involved, the intelligence gathering history of that government, and the presence of terrorist activity are important considerations that must be brought to bear on the Judge’s ultimate conclusions. The country’s human rights record is also an important consideration. *See, e.g.*, ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007). 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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