

KEYWORD: Guideline F; Guideline B

DIGEST: Applicant’s arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 12-05512.a1

DATE: 01/12/2017

DATE: January 12, 2017

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 12-05512
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Gregory F. Greiner, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 22, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 14, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 adverse decision was arbitrary, capricious, or contrary to law. The Judge's formal findings in favor of Applicant under Guideline F were not raised as an issue on appeal. Consistent with the following, we affirm.

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

Applicant is a 49-year-old employee of a defense contractor. He was born in Nigeria and earned a bachelor's degree in that country. He immigrated to the United States in 2000 and became a U.S. citizen in 2006. He married in 2002, has a divorce pending, and has a 10-year-old son.

Applicant's mother is a Nigerian citizen who resides with him in the United States. She became a permanent U.S. resident in 2016. He has a sister and brother who are citizens and residents of Nigeria. His brother is handicapped and is supported by rental income from family properties. His sister works for a bank, manages the rental properties, and takes care of their handicapped brother. His sister attempted to enter the United States, but was denied entry. Applicant has a history of providing financial support to family and friends in Nigeria, which included providing his sister about \$3,000 during a six month period in 2013-2014.

Applicant's uncle is a citizen and resident of Nigeria. Applicant's mother supported the uncle, including paying for his college education. The uncle lent Applicant money to immigrate to the United States. Applicant considers his uncle to be loyal to his mother. He claims he is not close to his uncle and communicates with him about two or three times a year.

Since immigrating to the United States, Applicant has visited Nigeria only once to attend his father's funeral. His father owned two apartment buildings, one has five units and the other four units. His handicapped brother lives in one unit. Applicant has no idea of the value of these properties. He claims he has no property or financial interests in Nigeria, but admitted the apartment buildings were left to his father's succession. He also claimed that he has no significant contact with friends or other relatives in Nigeria. He has two brothers who live in the United States.

Nigeria is a federal republic that faces many challenges, including terrorist activity, sectarian conflicts (ethnic, regional, and religious), entrenched corruption, and widespread mistrust of the government. Nigerian police and security forces had been accused of serious human rights abuses. Boko Haram, a U.S.-designated terrorist organization in northern Nigeria with ties to Al Qaeda, has increased its attacks against state and civilian targets, which included the abduction of almost 300 schoolgirls in 2014. The security situation in Nigeria is fluid and unpredictable.

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

Applicant, directly or through his mother and siblings, has frequent contact and a close relationship of affection with relatives in Nigeria. The presence of his relatives in Nigeria creates a heightened risk of foreign exploitation under disqualifying condition 7(a)<sup>1</sup> and potential conflict

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<sup>1</sup> Directive, Enclosure 2 ¶ 7(a) states, "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of

of interest under disqualifying condition 7(b).<sup>2</sup> Considering the security situation in Nigeria, Applicant has not met his burden of showing there is little likelihood his foreign relatives could create risk of foreign influence or exploitation.

## Discussion

Applicant asserts that the Judge failed to consider relevant evidence that detracted from his findings. For example, he argues that he has casual contact with his relatives in Nigeria, those relatives do not live in a region where terrorist activities occur, and his relationships with them are unlikely to put him in a compromising circumstance. The Judge, however, made findings related to many of those matters. Applicant's arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-02930 at 3 (App. Bd. Dec. 9, 2015).

Applicant contends that the Judge failed to give him credit under mitigating condition 8(e), *i.e.*, the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country. He points out that he disclosed his foreign contacts in his security clearance application and during his background interview.<sup>3</sup> However, a judge is not required explicitly to discuss all of the potentially applicable analytical factors set forth in the Directive, which includes the disqualifying conditions, mitigating conditions, and whole-person factors. ISCR Case No. 14-06135 at 2 n.1 (App. Bd. Jun. 15, 2016). In this regard, the key issue is whether the omission of a discussion of an analytical factor results in a judge's rulings or conclusions being arbitrary, capricious, or contrary to law. Considering the record, we find no reason to conclude the Judge's analysis was deficient in this regard.

Applicant has failed to identify any harmful error. 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."

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foreign exploitation, inducement, manipulation, pressure, or coercion[.]"

<sup>2</sup> Directive, Enclosure 2 ¶ 7(b) states, "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligations to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information[.]"

<sup>3</sup> Applicant's security clearance application and summary of his background interview were included in the record. As noted above, the Judge is presumed to have considered all record evidence.

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

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

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board