

KEYWORD: Guideline B

DIGEST: The Judge's failure to make findings and conclusions concerning the geopolitical situation in Morocco impairs his analysis. Adverse decision remanded.

CASENO: 06-14978.a1

DATE: 10/11/2007

DATE: October 11, 2007

In Re: ----- Applicant for ADP I/II/III Position)))))))	ADP Case No. 06-14978
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a trustworthiness designation. On August 31, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline

B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On May 9, 2007, after considering the record, Administrative Judge Joseph Testan denied Applicant's request for a trustworthiness designation. Applicant submitted a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's decision is arbitrary and capricious. We remand the case to the Judge.

Whether the Record Supports the Administrative Judge's Factual Findings

A. Facts

The Administrative Judge found as follows:

Applicant is 56 years of age. He was born in Morocco. He became a United States citizen in 1992. His spouse, to whom he has been married since 1984, was born in the United States. Their two children were born in the United States.

Applicant's mother and nine siblings are citizens of Morocco. His mother and seven siblings reside in Morocco; one sibling resides in a third country and another resides in the United States. One of applicant's siblings is a senior Moroccan government official, and as such, is an agent of Morocco.

Applicant traveled to Morocco in at least 1997, 1999, 2000 and 2002 to visit his family. He communicates with his mother every three to four weeks by telephone, and with his siblings once a month by telephone.

In a written statement he gave to the OPM in October 2004, Applicant stated he owned a plot of farm land in Morocco. In his response to the SOR, he stated he no longer owns any property in Morocco.

B. Discussion

The Appeal Board's review of the Judge's findings of fact is limited to determining if they are supported by substantial evidence—"such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21 (1966). In evaluating the Judge's findings, we are required to give deference to the Administrative Judge's credibility determinations. Directive ¶ E3.1.32.1.

The Judge's findings will be discussed in the context of his conclusions

Whether the Record Supports the Administrative Judge's Ultimate Conclusions

A Judge is required to “examine the relevant data and articulate a satisfactory explanation for” the decision, “including a ‘rational connection between the facts found and the choice made.’” *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)). The Appeal Board may reverse the Judge’s decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. We review matters of law *de novo*.

Applicant contends that the Judge’s adverse trustworthiness determination is arbitrary and capricious. In support of that contention, he points to his lengthy and significant ties to the United States and argues that his family located in Morocco present no trustworthiness concern. The Board remands the case for further processing.

In this case, the Judge’s decision contains no findings or conclusions about the nature of the Moroccan government or the nature of potential threats posed by any groups operating within that country. The Judge’s failure to make findings and conclusions concerning the geopolitical situation within Morocco, including the security/intelligence profile of the country *vis-a-vis* the United States, impairs his analysis, both of the Guideline B concerns and the whole-person. *See, e.g.*, ISCR Case No. 04-02630 at 2-3 (App. Bd. May 23, 2007). Therefore, we remand the case to the Judge for a new decision. The new decision should include a Guideline B and whole-person analysis which takes into account the nature of the Moroccan government, the security and intelligence profile of that country *vis-a-vis* the United States, and situation in Morocco insofar as it bears on the potential for coercion of the Applicant. It should not contain any language pertaining to security clearances as this case is an ADP trustworthiness determination.

Order

The case is REMANDED to the Judge for the issuance of a new decision.

Signed: Miachael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board