

KEYWORD: Guideline C; Guideline B; Guideline F

DIGEST: Applicant’s evidence not sufficient to mitigate Guideline B security concerns arising from his connections to Nigeria. In light of this holding, the Government’s cross-appeal is moot. Adverse decision affirmed.

CASENO: 07-10635.a1

DATE: 02/17/2009

DATE: February 17, 2009

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| In Re: |) | | |
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| Applicant for Security Clearance |) | | |
| |) | | |

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel
James F. Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 16, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 12, 2008, after the hearing, Administrative Judge Paul J. Mason denied Applicant’s

request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30. Department Counsel filed a timely cross-appeal pursuant to Directive ¶ E3.1.28.

Applicant raised the following issues on appeal: whether certain of the Judge's factual findings were supported by substantial record evidence; and whether the Judge's adverse security clearance decision under Guideline B was arbitrary, capricious, or contrary to law. Department Counsel raised the following issue on cross-appeal: whether the Judge erred in his application of the Guideline F mitigating conditions.¹ Finding no harmful error, we affirm.

The Judge made the following pertinent findings of fact: Applicant was born in Nigeria, immigrating to the U.S. in the late 1980s. He became a U.S. citizen in the early 2000s. He held a Nigerian passport, issued after he became a U.S. citizen, but has since turned it over to the facility security officer.

Applicant's wife is a citizen of Nigeria. Born there in the early 1960s, she received an advanced degree from a U.S. university. She applied for U.S. citizenship one day before the hearing in Applicant's case. Applicant's father and stepmother are resident citizens of Nigeria. Applicant is close to his father, speaking to him by phone twice a month. His father owns some real estate in Nigeria, which Applicant "has an option to inherit." Decision at 4. Applicant also has a brother, who is a resident and citizen of Nigeria, a stepbrother who is a Nigerian citizen but a resident alien of the U.S.,² and two sisters, who are naturalized U.S. citizens. His in-laws are also residents and citizens of Nigeria. Applicant's wife communicates with them more frequently than Applicant does with his father. Applicant traveled to Nigeria five or six times in the six years preceding the close of the record.

Nigeria has a poor human rights record. Many of its regions are subject to lawlessness, characterized by armed conflict among various religious, political, and ethnic factions. In the Niger Delta region, for example, kidnaping and other disruptions pose a danger to U.S. citizens traveling there.

Applicant has experienced some financial difficulties since 2002. He was unemployed from May 2002 until June 2004, during which time he relied for financial support upon a severance package from his job, upon his savings, upon unemployment compensation, and upon money received from his church. He filed twice for Chapter 13 bankruptcy protection, but the petitions were dismissed because Applicant could not make the payments.

The SOR lists several delinquent debts for Applicant. The Judge concluded, after comparing the SOR with evidence supplied by both the Government and by Applicant, that only two were actually delinquent at the close of the record: a \$15,010.00 judgement in favor of a creditor and a credit card debt of \$8,927.00. The remaining debts were either paid, disputed, and/or dropped from

¹The Judge's favorable decision under Guideline C is not at issue in this appeal.

²Government Exhibit 2, Security Clearance Application, at 28-29, lists three individuals identified as stepbrothers of Applicant, who are citizens of Nigeria.

Applicant's credit report.

Applicant challenged some of the Judge's findings of fact, for example a statement that Applicant's wife did not apply for U.S. citizenship at her first opportunity due to lack of interest. Decision at 3. The Board concludes that the Judge's material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.") Even if the Judge's findings contain error, such error is harmless in that it would not change the outcome of the case. *See* ISCR Case No. 06-23112 at 2 (App. Bd. Dec. 31, 2007). The Judge concluded that the nature and extent of Applicant's family connections to Nigeria raised security concerns under Guideline B. In evaluating Applicant's case for mitigation, he paid attention to the closeness of Applicant's relations with Nigerian family members, including his spouse; the frequency of his contact with those living in Nigeria; and the possibility that Applicant could inherit property in Nigeria. Although the Judge gave due consideration to the matters presented by Applicant, including evidence as to the high quality of his work performance and his character, his conclusion that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance" is sustainable. Decision at 13. *See 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 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). In light of this conclusion, the Board need not address the issue raised by the Government on cross-appeal.

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody

Administrative Judge

Member, Appeal Board