

KEYWORD: Guideline B

DIGEST: Applicant has supported U.S. objectives, sometimes at the expense of his own safety. Nevertheless, the Judge reasonably concluded that his extensive family ties to Sudan raised security concerns which Applicant failed to mitigate. Adverse decision affirmed.

CASENO: 08-06017.a1

DATE: 02/18/2010

DATE: February 18, 2010

In Re:)	
)	
-----)	ISCR Case No. 08-06017
)	
Applicant for Security Clearance)	

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 security clearance. On April 9, 2009, DOHA 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 November 30, 2009, after the hearing, Administrative Judge Henry Lazzaro 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 supported by substantial record evidence and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant is employed by a Defense contractor as a linguist. He has been exposed to hostile fire while in the execution of his duties, and he enjoys an excellent reputation with the U.S. military.

He was born and raised in Sudan. He attended a trade school in that country and was subsequently employed by the Sudanese government. He immigrated to a Middle Eastern country, where he worked in the office of a government ministry. He immigrated to the U.S. in the late 1990s.

Applicant and his wife, who was born in Sudan, became naturalized U.S. citizens in the mid-2000s. Applicant's parents are citizens and residents of Sudan, as are his ten siblings and half-siblings. He speaks to his father a couple of times a year by telephone and sends his parents between \$500 and \$1000 a year. Applicant's parents-in-law are also citizens and residents of Sudan, as are her thirteen siblings. Applicant's wife contacts one of her siblings by telephone three times a year. Applicant and his wife have visited Sudan twice in the mid-2000s and "will likely visit Sudan in the future." Decision at 3.

Applicant has applied for a small parcel of land from the Sudanese government which, if it is awarded, will be worth \$3,000-\$4,000. Applicant owns a home in the U.S. with an equity of \$125,000. His salary is about \$145,000.

Sudan is a state sponsor of terrorism, so designated by the U.S. Department of State. The U.S. has imposed comprehensive economic, trade, and financial sanctions against the country. Elements of Al-Qa'ida-inspired terrorists, as well as elements of Palestine Islamic Jihad and Hamas, are located in Sudan. Its government has a poor human rights record, and the Darfur region has experienced genocide.

After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant does point to an error by the Judge, his finding that Applicant worked for a government ministry while in the Middle Eastern country. The record demonstrates that, to the contrary, Applicant worked for a private company while there. However, even if the Judge had not made this error, there is no basis to conclude that he would have decided the case differently. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 06-21025 at 2 (App. Bd. Oct. 9, 2007).

The Judge considered the favorable evidence cited by Applicant, including the extent to which he has supported the U.S. mission under circumstances that threaten his own safety. The Board has long recognized the probative value of such evidence. *See, e.g.*, ISCR Case No. 06-25928 at 4 (App. Bd. Apr. 9, 2008). However, the Judge reasonably explained why he concluded that Applicant had not met his burden of persuasion as to mitigation, citing evidence of Applicant's extensive family ties to Sudan, his affection for his family, his visits to Sudan, and the geopolitical

circumstances of that country.¹ After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated 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 Judge’s adverse decision is sustainable on this record. The Board need not agree with a Judge’s decision in order to find it sustainable. *See, e.g.*, ISCR Case No. 06-23881 at 2 (App. Bd. Nov. 2, 2007). “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).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan

Michael Y. Ra’anan
Administrative Judge
Chairperson, 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

¹“Each case must be judged on its own merits[.]” Directive ¶ E2.2(b). The Judge’s decision in this case is consistent with Board precedent that close cases must be resolved in favor of the national security. *See, e.g.*, ISCR Case No. 01-26893 at 10 (App. Bd. Oct. 16, 2002).