

KEYWORD: Guideline B

DIGEST: In a Guideline B case, the Government is not required to present direct evidence of a nexus between an applicant's circumstances and the concern addressed by the Guideline. Applicant's foreign relatives, with whom he regularly communicates and who live in a country that practices industrial espionage, create a heightened risk of coercion. Adverse decision affirmed.

CASE NO: 09-05812.a1

DATE: 12/01/2011

DATE: December 1, 2011

In Re:)	
)	
-----)	ISCR Case No. 09-05812
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 9, 2011, 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). On April 21, 2011, DOHA amended the SOR to include allegations of security concern under Guideline E (Personal Conduct). Applicant requested a hearing. On September 20, 2011, after the hearing, Administrative Judge Jennifer I. Goldstein 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 the Judge erred in concluding that Applicant's case raised Guideline B security concerns and whether the Judge erred in her application of the pertinent mitigating conditions. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant was born in India, receiving his undergraduate degree from a college in that country. He came to the U.S. to obtain a Master's degree in computer science. He became a U.S. citizen in the early 2000s, as did his wife. His two children were born in the U.S.

Applicant's father and mother are citizens and residents of India. Applicant has an Indian bank account, which he uses to help his parents if they need it. The most he has given them is \$8,000, which is approximately what it would cost to live a comfortable life in India for a year. He speaks to his parents by phone on a weekly basis and visits them approximately once a year. Applicant's sister is a citizen of India. She is married to a U.S. citizen and her children are citizens of this country.

Applicant's mother-in-law and brother-in-law are citizens and residents of India. He has a sister-in-law who is a citizen of India but who resides in another country.

Applicant enjoys an excellent reputation for honesty, reliability, and trustworthiness. His colleagues express high esteem for his professional capacities.

India has a multi-party, federal, parliamentary system of government. It has been an independent republic since 1947. In 2008, terrorists attacked Mumbai, targeting areas frequented by Westerners. The U.S. has warned of safety concerns for U.S. citizens in India. India has "human rights issues," (Decision at 5) and pervasive corruption. There have been several cases recently of persons and companies illegally exporting and selling missile technology and defense equipment to India.

In the Analysis, the Judge concluded that Applicant's circumstances raised security concerns under Guideline B. Among other things, she stated that the presence in India of close family members, viewed in light of that country's troubles with terrorism¹ and its human rights abuses, and his sharing living quarters with a person (his wife) having foreign family contacts, establish the "heightened risk" required by two of the disqualifying conditions.² Having found security concerns, the Judge then proceeded to analyze Applicant's evidence of mitigation, concluding that Applicant had failed to meet his burden of persuasion. She noted evidence of Applicant's closeness to his own

¹The presence of terrorist activity in a foreign country is an important consideration in a Guideline B case. *See, e.g.,* ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007).

²Directive, Enclosure 2 ¶ 7(a): "contact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion[.]" Directive, Enclosure 2 ¶ 7(d): "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion[.]" The Judge also found that Directive, Enclosure 2 ¶¶ 7(b) and (e) were fairly raised by the evidence, though she also concluded that the latter concern was mitigated.

relatives and the presumed closeness of Applicant's wife to her relatives in India,³ which, the Judge concluded, is a reason to believe that Applicant could be susceptible to coercion.

Applicant contends that the Judge erred in concluding that his case presented security concerns under Guideline B. Among other things, Applicant takes issue with the Judge's conclusion that his circumstances evidenced a "heightened risk" of foreign coercion.

We have considered Applicant's arguments, noting, however, that the Government is not required to present "*direct* evidence of a nexus" between an applicant's circumstances and the concern addressed by Guideline B. Neither is the Government required to prove that an applicant poses a clear and present danger to national security. ISCR Case No. 02-02892 at 7 (App. Bd. Jun. 28, 2004) (emphasis added). Rather, we have previously held that this language in the Directive addresses primarily the nature and extent of an applicant's foreign contacts. *See, e.g.*, ISCR Case No. 08-09211 at 3-4 (App. Bd. Jan. 21, 2010); ISCR Case No. 08-04488 at 4 (App. Bd. Apr. 23, 2009) (The applicant's family members in Taiwan, with whom he regularly communicated and visited, and Taiwan's history of industrial espionage, created a heightened risk of coercion). The Judge's conclusion that Applicant's contacts in India, viewed in light of terrorist activity in that country, create a "heightened risk" of coercion is sustainable on the record that was before her. We find no error in the Judge's analysis of the Guideline B disqualifying conditions.

Additionally, we find no error in the Judge's analysis of the pertinent mitigating conditions. Although Applicant contends that the Judge either failed to consider favorable evidence or that she mis-weighed the evidence, his brief, viewed as a whole, appears merely to argue an alternative interpretation of the evidence rather than to demonstrate reversible error. Applicant has cited to other DOHA cases in support of his appeal. We have given due consideration to these cases, and to Applicant's treatment of them in his brief. However, these cases do not establish error.

The record supports a conclusion 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 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 Judge's adverse security clearance decision is AFFIRMED.

³*See, e.g.*, ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005): "[I]n-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk."

Signed: Jeffrey D. Billett _____

Jeffrey D. Billett
Administrative Judge
Member, 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