

KEYWORD: Guideline B

DIGEST: The Judge’s findings are supported by substantial evidence. The Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant’s eligibility for a clearance. In-laws can pose a security risk. The nature of the foreign government and the presence of terrorist activity are important considerations. Adverse decision affirmed.

CASE NO: 12-01295.a1

DATE: 01/20/2015

DATE: January 20, 2015

In Re:)	
)	
-----)	ISCR Case No. 12-01295
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 7, 2013, DoD 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 decision on the written record. On October 16, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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’s findings of fact were erroneous; whether the Judge erred in concluding that the evidence raised security concerns; and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Born and educated in Egypt, Applicant served in the Egyptian military from the early to mid-1980s. He became a U.S. citizen in the early 2000s. Since the late 2000s, he has worked for a Defense contractor. This employer destroyed Applicant’s Egyptian passport in 2014.

Applicant’s parents are deceased. His wife is a dual citizen of the U.S. and Egypt. He has numerous siblings and siblings-in-law. One of his siblings has passed away and another is a naturalized U.S. citizen. Others, however, are citizens and residents of Egypt, and three of them work for the Egyptian government. Applicant speaks to his in-laws once or twice a year; his wife speaks to them more frequently.

Applicant and his siblings own six apartment buildings in Egypt. In 2011, he estimated that his share was worth about \$20,000, although it is currently worth about half that due to a decrease in real estate values in Egypt.

In his clearance interview, Applicant stated that he would be willing to renounce his Egyptian citizenship if necessary, but he would prefer not to do that. He stated that any loyalty he feels to Egypt is based on his family there and his memories of them. Applicant’s record discloses no derogatory information of a financial or criminal sort.

Egypt is in a state of crisis politically and economically. Terrorism and violence have increased since 2013, and there is little indication that the situation is improving. Terrorist organizations operate within the country, and “conflicts and attacks are rampant.” Decision at 4. Egypt has a poor human rights record. The State Department has issued travel warnings due to ongoing threats to U.S. citizens, including kidnaping and mob protests.

The Judge’s Analysis

The Judge concluded that Applicant’s family connections with and real estate holdings in Egypt raised concerns under Guideline B. She stated that these connections to a country in which terrorists operate and that practices human rights abuses create a heightened risk. She further stated that Applicant’s circumstances could place him in a conflict of interest.¹ In concluding that

¹See Directive, Enclosure 2 ¶ 7(a): “contact with a foreign family member . . . who is a citizen or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;” ¶7(b): “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 persons, group, or country by providing that information;” ¶7(d): “sharing living quarters with a person

Applicant had failed to mitigate these concerns, the Judge cited to evidence of his “strong emotional bond” with his siblings in Egypt and his ongoing contact with them. She stated that these family members could become a means through which he could be subjected to coercion. In the whole-person analysis she cited to his contact with his Egyptian family members. She also noted his hesitancy to renounce his Egyptian citizenship because of his family.

Discussion

Applicant asserts that the findings do not show any evidence of criminal problems, financial delinquencies, or drug abuse. To the extent that he is challenging the sufficiency of the Judge’s findings, we conclude that her material findings of security concern are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant asserts that the record does not raise concerns under Guideline B. We note that the Directive presumes a nexus, or rational connection, between admitted or proven conduct under any of the Guidelines and an applicant’s eligibility for a clearance. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). In the case before us, Applicant admitted all but one of the SOR allegations, and the Government produced substantial evidence of the allegations as well. Given the totality of Applicant’s circumstances, we find no reason to disturb the Judge’s conclusion that Applicant’s circumstances present a heightened risk of coercion. Applicant’s argument is not sufficient to rebut the presumption of nexus.

Applicant challenges the significance that the Judge attached to his ties within Egypt. In-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 12-00084 at 3 (App. Bd. May 22, 2014). In Foreign Influence cases, the nature of the foreign government involved and the presence of terrorist activity are important considerations. The country’s human rights record is important. *See, e.g.*, ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007); ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006). Given evidence of Applicant’s siblings and in-laws in a country in which terrorist activity occurs and which has a poor human rights record, we find no error in the Judge’s mitigation analysis.

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.”

or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;” and ¶7(e): “a substantial business, financial, or property interest in a foreign country . . . which could subject the individual to heightened risk of foreign influence or exploitation[.]”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board