

KEYWORD: Guideline B

DIGEST: Applicant argues that he has never taken any action that would harm the U.S. and that he has no property or financial interests in Nigeria, etc. However, the Government need not wait until a person has actually engaged in conduct adverse to U.S. interests before it can deny a security clearance. Even those with good security records can encounter circumstances in which they could be subjected to pressure or find themselves in a conflict between their own legitimate interests and the security interests of the U.S. Adverse decision affirmed.

CASENO: 17-04278.a1

DATE: 05/23/2019

DATE: May 23, 2019

In Re: _____)
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Applicant for Security Clearance)

ISCR Case No. 17-04278

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Richard L. Sloane, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 30, 2018, 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 hearing. On February 28, 2019, after the hearing, 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 erred in concluding that his foreign contacts 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 in Nigeria, Applicant came to the U.S. in the late 2000s, where he obtained a college degree. He became a U.S. citizen about five years ago. His parents are citizens and residents of Nigeria, and his mother is a retiree of the Nigerian government. Applicant’s four siblings are citizens of Nigeria, and three of them reside there as well. One sibling worked for the Nigerian government in a job that placed him in contact with high-ranking officials. Applicant contacts his relatives by phone or text from biweekly to monthly and traveled to Nigeria in 2013 and 2016. Applicant enjoys an excellent reputation for the quality of his duty performance.

Nigeria is challenged by sectarian, religious, and ethnic violence. Terrorist groups are active throughout the country. Organizations such as Boko Haram and ISIS operate in Nigeria and attack police, military personnel, and U.S. citizens and interests. Applicant stated that most terrorist activity occurs in a different part of Nigeria from where his family resides and which he has visited.

The Judge’s Analysis

The Judge concluded that Applicant’s ongoing contact with his family members in Nigeria and his recent travels there create a heightened risk of foreign pressure or coercion. His Nigerian contacts could become a basis for him to be placed in a conflict of interest. She also concluded that Applicant has not demonstrated sufficient connections within the U.S. that would outweigh his history and family connections in Nigeria.

In her whole-person analysis, the Judge cited to Applicant’s clean security record and a lack of questionable conduct by him. However, she found there to be “significant potential for pressure, coercion, exploitation, or duress[.]” Decision at 7. Accordingly, she concluded that Applicant had not met his burden of persuasion as to mitigation.

Discussion

The Applicant challenges the Judge’s conclusion that his connections within Nigeria raise security concerns. He argues that his circumstances are ““normal results of [his] family situation.”” Appeal Brief at 3. He argues that he has never demonstrated questionable conduct, that he has no financial interests in Nigeria, and that he has never taken action that would cause harm to the U.S.

The Directive presumes that there is a nexus between proved or admitted conduct or circumstances under any of the Guidelines and an applicant’s eligibility for access to national security information. *See, e.g.*, ISCR Case No. 17-02595 at 3 (App. Bd. Jul. 31, 2018). We note the Judge’s finding about Applicant’s claim that his relatives live in part of the country where terrorist activity is less likely to occur. However, we also note the following findings: Applicant has close family members in Nigeria; terrorist activity occurs in Nigeria; the Nigerian government has a poor human rights record; and Applicant’s sibling recently worked in a governmental position in close proximity to high-ranking officials. These findings, viewed in light of the record as a whole, support her conclusion that Applicant’s family connections pose a heightened risk that he could come to the attention of those seeking access to U.S. classified information. *See, e.g.*, ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017).¹ Applicant’s appeal arguments do not provide a reason to rebut the presumption of nexus.

Applicant argues that he has never taken any action that would harm the U.S. and that he has no property or financial interests in Nigeria, etc. However, the Government need not wait until a person has actually engaged in conduct adverse to U.S. interests before it can deny a security clearance. Even those with good security records can encounter circumstances in which they could be subjected to pressure or find themselves in a conflict between their own legitimate interests and the security interests of the U.S. *See, e.g.*, ISCR Case No. 17-02599 at 3 (App. Bd. Jan. 18, 2019). Applicant’s appeal arguments consist, in large measure, of a disagreement with the Judge’s weighing of the evidence. Such arguments are not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02463 at 2 (App. Bd. Sep. 10, 2018).

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.*

¹“Heightened risk” is not a high standard to meet. It is a risk that is greater than the normal risk inherent in having a family member living under a foreign government. Depending on the circumstances of a case, one or more foreign contacts even in a country that is friendly to the U.S. may create a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. *See, e.g.*, ISCR Case No. 17-03026 at 5 (App. Bd. Jan. 16, 2019). We note the Judge’s finding that terrorist activity occurs throughout Nigeria. The official notice documents submitted by the Government assert that Boko Haram and ISIS conduct terrorist activity in northern Nigeria. *See, e.g.*, Country Reports on Terrorism 2016. However, we do not construe the official notice documents to mean that persons in other parts of Nigeria are not also at some substantial risk of terrorist activity. In any event, even if the Judge’s finding was somewhat overbroad, it did not likely affect the overall outcome of the case.

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, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan

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

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board