

KEYWORD: Guideline B; Guideline C

DIGEST: The Judge concluded that Applicant's immediate family members who are residents or citizens of Iran create a potential conflict of interest. Adverse decision affirmed.

CASENO: 09-04388.a1

DATE: 04/13/2010

DATE: April 13, 2010

In Re:)	
)	
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)	ISCR Case No. 09-04388
)	
)	
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 August 31, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and

Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On January 29, 2010, after the close of the record, Administrative Judge Rita C. O'Brien denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge found that Applicant earned a bachelor's degree from a U.S. university and became a naturalized U.S. citizen in 1993. He was originally from Iran. The Judge found that Applicant married an Iranian citizen in Iran in 1995, and his wife became a U.S. citizen in 2001. Applicant's two children were born in the United States. The Judge found that Applicant's mother, three brothers, and one sister are citizens and residents of Iran and Applicant's in-laws are citizens of Iran living in the United States. The Judge also found that after attaining U.S. citizenship in 1993, Applicant obtained an Iranian passport. When it expired a number of years later, he renewed it. Applicant currently possesses this valid Iranian passport and used it to enter and exit Iran on multiple occasions. The Judge found that Applicant is unwilling to surrender or invalidate his Iranian passport because without it, he feels that it would be almost impossible for him to travel to Iran. The Judge found that the United States has not had diplomatic or consular relations with Iran since 1979 and that Iran engages in clandestine efforts to illegally obtain U.S. military equipment and other sensitive technology. The Judge also found that Iran sponsors international terrorism, undermines the Middle East peace process, and violates the human rights of the Iranian people.

The Judge concluded that American citizens with immediate family members who are citizens or residents of Iran are at heightened risk of coercion, exploitation, or pressure. Applicant has immediate family members who are citizens and residents of Iran. The Judge concluded that Applicant's ties of affection and obligation to his foreign family create a potential conflict of interest between his desire to protect them and his obligation to protect classified information. The Judge considered Guideline B mitigating factors and concluded that they did not apply. Regarding Guideline C, the Judge concluded that Applicant's use of his Iranian passport after he became a U.S. citizen constituted an exercise of foreign citizenship and was disqualifying. The Judge also concluded that none of the Guideline C mitigating factors applied in this case.

Applicant points to his academic and job-related achievements and articulates his belief that the United States has provided him with his opportunities and that he feels obligated to give something back. He states his belief that the Judge's conclusion that the Iranian government might try to obtain information by using his family members is pure speculation. Applicant asserts that should the Iranian government attempt to engage in such activity, he will take all necessary steps to protect classified information. Applicant's arguments do not establish error.

As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See, e.g., ISCR Case No. 06-

10320 at 2 (App. Bd. Nov. 7, 2007). A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. She discussed the applicability of the mitigating factors listed under Guidelines B and C, but indicated with considerable detail why those mitigating conditions could not be invoked in this case to alleviate the government's security concerns.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). Also, Applicant characterizes as speculative the Judge's articulation of the concern created by the presence of immediate family members in Iran. Given the facts of this case, this assertion is not well founded. 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board