

KEYWORD: Guideline B; Guideline C

DIGEST: Born in Iran, Applicant became a U.S. citizen in 2000. Applicant's parents, five siblings, parents-in-law and brother-in-law are all citizens and residents of Iran. The Judge's decision that it is not clearly consistent with the interests of national security to grant Applicant a security clearance is sustainable on this record. Adverse decision affirmed.

CASENO: 07-07928.a1

DATE: 10/01/2008

DATE: October 1, 2008

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In Re:)	
)	
-----)	ISCR Case No. 07-07928
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Edward A. Kraus, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 28, 2007, 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 a hearing. On June 27, 2008, after the hearing, Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in his application of the Guideline B mitigating conditions; and whether the Judge’s whole person analysis was error.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an engineer for a defense contractor. Born in Iran, he came to the U.S. in the late 1970’s to attend college, ultimately receiving a Ph.D. He became U.S. citizen in 2000. He married his wife in 2002 in Iran, having met her there in 2001. She became a U.S. citizen in 2006, although Iranian authorities consider persons similarly situated—U.S. citizens born in Iran—to be Iranian citizens.

Applicant’s parents, five siblings, parents-in-law, and brother-in-law are all citizens and residents of Iran. His sixth sibling lives in the U.S. as a permanent resident. He speaks to his parents on the telephone about once or twice a month. His parents-in-law have permanent resident status in the U.S. and divide their time between the U.S. and Iran. Applicant owns no foreign assets and is described as being of good character.

Iran is a constitutional Islamic republic. The U.S. has not had diplomatic ties with Iran since 1980. Iran is engaging in efforts to acquire weapons of mass destruction. It supports international terrorism, has committed numerous serious human rights violations, and has intervened in the internal affairs of Iraq.

In his brief, Applicant argues, *inter alia*, that the Judge did not consider certain mitigating evidence, for example that Applicant has never in the past been approached by Iranian authorities and that his work is highly beneficial to the U.S. Furthermore, Applicant argues that the Judge gave too much weight to Applicant’s foreign relatives and Iran’s status as country hostile to the U.S. The Board has considered all the arguments contained in Applicant’s brief, evaluating them in light of the record as a whole. A Judge is presumed to have considered all the evidence in the record unless he specifically states otherwise. *See, e. g.*, ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). Although Applicant disagrees with the weight which the Judge assigned to certain pieces of evidence, he has not demonstrated that the Judge’s analysis is arbitrary, capricious, or contrary to law. *See, e. g.*, ISCR Case No. 07-10454 at 2 (App. Bd. August 12, 2008). “[A]n applicant with family members living in a country hostile to the U.S. bears a ‘heavy burden’ in demonstrating that those family members do not pose a security risk.” ISCR Case No. 06-18918 at 2 (App. Bd. May 23, 2008), citing ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007).

¹The Judge’s favorable decision under SOR ¶ 1(c) and under Guideline C is not at issue in this appeal.

In light of the record as a whole, the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also 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)). Contrary to Applicant's assertion, there is nothing in the Judge's decision to suggest that the Judge adhered to a "blanket" rule that would automatically result in clearance denial for an Applicant with close family members in Iran. The Judge's decision that "it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 9. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board