

KEYWORD: Guideline C; Guideline B

DIGEST: Record evidence of Applicant’s extensive family contacts in Israel, her dual nationality, and her possession of an Israeli passport support the Judge’s conclusion that she had not mitigated the security concerns in her case. Adverse decision affirmed.

CASENO: 08-05034.a1

DATE: 05/21/2009

DATE: May 21, 2009

In Re:	)	
	)	
-----	)	ISCR Case No. 08-05034
	)	
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 13, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 10, 2009, after the hearing, Administrative Judge Claude R. Heiny denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a software engineer for a defense contractor. Applicant became a citizen of Israel, having moved there with her parents at a young age. She was educated in Israel and moved to the U.S. in the late 1970s, becoming a naturalized U.S. citizen in the mid-1980s. She is a dual national and is unwilling to renounce her Israeli citizenship, although she stated that she would renounce her Israeli passport if needed for her employment. There is no evidence that this has been done. She has five siblings who are citizens and residents of Israel. She maintains contact with four of them. Three of her siblings are employees of the Israeli government, including one who works for the Israeli Ministry of Defense.

In support of her appeal Applicant has submitted new matters (primarily her statement that she has now surrendered her passport), not contained in the record. The Board cannot consider this new evidence. See Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”). See also ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 decision that “it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance” is sustainable on this record. Decision at 10. See also *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security’”).

### **Order**

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

