

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant’s having applied for an Iranian passport and having used it for travel to Iran was significant derogatory information not available during previous investigation. Applicant is not entitled to reciprocity. His possession and use of the passport after obtaining U.S. citizenship, his Iranian relatives, and the possibility that he could inherit property in Iran support Judge’s decision. Adverse decision affirmed.

CASE NO: 08-06559.a1

DATE: 12/02/2010

DATE: December 2, 2010

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In Re:)	
-----)	ISCR Case No. 08-06559
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffrey, Esq., Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 6, 2009, 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 August 25, 2010, after the hearing, Administrative Judge Philip S. Howe 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 Applicant is entitled to a clearance under the doctrine of reciprocity; whether certain of the Judge's findings of fact were supported by substantial record evidence; whether the Judge failed to consider record evidence favorable to Applicant; whether the Judge erred in his application of the mitigating conditions; and whether the Judge's whole-person analysis was in error. Consistent with the following discussion, we affirm the decision of the Judge.

Facts

The Judge made the following pertinent findings of fact: Applicant as an unmarried employee of a Defense contractor. He has a college degree, a law degree, and a graduate law degree from a European university.

Born in Iran, Applicant immigrated with his family to this country in the early 1980s. He became a U.S. citizen in the early 2000s. He has lived here continuously, except for a year studying abroad. His mother, father, and sibling are dual citizens of the U.S. and Iran, as is Applicant. They live in the U.S. Applicant's grandmother, aunt, and uncle are citizens and residents of Iran. Applicant's only contact with them is to speak with his grandmother on the telephone approximately every six months.

Applicant had an Iranian passport at the time he became a U.S. citizen. It finally expired in the late 2000s, after which he obtained another one. He used this new passport for travel to Iran. Applicant held on to his passport for nine months after the hearing before turning it over to the control of his security officer.

Applicant stands to inherit some property in Iran. He advised the clearance investigator that he did not want to renounce his Iranian citizenship due to this possibility of inheritance.

The Defense Industrial Security Clearance Office (DISCO) granted Applicant a security clearance in the late 2000s. Based on that determination, another Government agency granted Applicant a clearance soon after. Applicant made his most recent trip to Iran using his Iranian passport after that agency's grant of a clearance.

Iran and the U.S. have not had diplomatic relations since 1980. Iran is attempting to obtain weapons of mass destruction; it supports international terrorism; it supports violent opposition to the Mideast peace process; and intervenes in the internal affairs of Iraq. The U.S. considers Iran the most active state sponsor of terrorism. It provides critical support to non-state terrorist groups.

Discussion

DoD 5220.22M (the "NISPOM") § 2-204 governs reciprocity. It provides, in pertinent part:

Any previously granted [clearance] that is based upon a current investigation of a scope that meets or exceeds that necessary for the clearance required shall provide the basis for issuance of a new clearance without further investigation or

adjudication, unless significant derogatory information that was not previously adjudicated becomes known to the granting agency.

Applicant's having applied for an Iranian passport and having used it for travel to Iran constitute "significant derogatory information" not available to the other Government agency.¹ Accordingly, Applicant is not entitled to reciprocity.

We examine a Judge's findings to determine if they are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.") In this case, the Judge's material findings are based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record evidence as a whole, the Judge's material findings of security concern are sustainable. *See, e.g.*, ISCR Case No. 08-07528 at 2 (App. Bd. Dec. 29, 2009).

Applicant contends that the Judge did not consider all of the record evidence, *e.g.*, his language skills, evidence that he does not intend to return to Iran, and the speculative nature of his likelihood of inheriting property in Iran. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case 09-01735 at 2 (App. Bd. Aug. 31, 2010). There is nothing in Applicant's presentation on appeal or in the Decision to rebut the presumption that the Judge considered all of the evidence.

We have considered the Decision in light of the record as a whole. Applicant's Iranian relatives, including those who reside in Iran; his possibility of inheriting property in Iran; his possession and use of an Iranian passport after having obtained U.S. citizenship; and the Judge's findings about the dilatory circumstances of Applicant's surrender of that passport cumulatively support the Judge's adverse decision. Applicant is correct that the Directive does not specify a period of time during which an applicant must relinquish a passport. In this case, however, the Judge's conclusion that Applicant's nine-month delay between the date of the hearing and his relinquishment of the passport undermined his efforts to mitigate the Guideline C concerns is sustainable.

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 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).

¹Furthermore, Hearing Exhibit 3 states that the other agency did not conduct an investigation of its own, having relied on the prior grant by DISCO.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin
Jean E. Smallin
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