

KEYWORD: Guideline B

DIGEST: Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Appeal Board. Adverse decision affirmed.

CASE NO: 10-02660.a1

DATE: 06/06/2011

DATE: June 6, 2011

In Re:	)	
	)	
-----	)	ISCR Case No. 10-02660
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

James S. DelSordo, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 22, 2010, DOHA 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 March 21, 2011, after the hearing, Administrative Judge Arthur E. Marshall, Jr., 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 was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant is a language instructor working for a Defense contractor. He is married and has one child.

Applicant was born in Iran, though he is a member of an ethnic minority. He has been arrested and jailed for political reasons by the Iranian government. He fled Iran and lived in two other countries before immigrating to the U.S. in 1998.

Applicant's wife is a legal resident of the U.S. She is a citizen of another country and will apply for U.S. citizenship as soon as she is eligible to do so. Applicant's parents and siblings are residents and citizens of Iran. None work for the government there, though some family members have been arrested or have been pressured by the government. Applicant exchanges telephone calls with his relatives about every two months.

The Judge took administrative notice, among other things, of the following: Iran and the U.S. have not had diplomatic relations since 1979. The President has declared a state of National Emergency regarding Iran, because it poses "an extraordinary threat" to U.S. security. Iran engages in clandestine efforts to obtain U.S. military equipment and other sensitive technology. It sponsors international terrorism, and it supports parties that have engaged in sectarian violence in Iraq.

In the Analysis portion of the Decision, the Judge noted that Applicant's Iranian family belongs to an ethnic minority and that members of that family have been targeted in the past by the government. He noted that, under the circumstances, "pressure could . . . be brought to bear on [Applicant's] family, with whom he maintains a genuine bond," in an effort to coerce Applicant to reveal classified or sensitive information. Decision at 11. Accordingly, the Judge concluded that Applicant had not mitigated the security concerns arising from his family contacts in Iran.

Applicant has cited two cases by Hearing Office Judges which, he contends, are factually similar to his and in which the Judges granted the applicants a clearance. We give due consideration to these cases. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 08-09236 at 4 (App. Bd. Jan. 14, 2010). The cases cited by Applicant actually contain significant differences from his own. These cases do not demonstrate that the Judge erred in his adverse determination.

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. 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple  
Michael D. Hipple  
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