

DATE: October 16, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26893

APPEAL BOARD DECISION AND REVERSAL ORDER

APPEARANCES

FOR GOVERNMENT

Henry Lazzaro, Esq., Department Counsel

FOR APPLICANT

Mark H. Zoole, Esq.

Administrative Judge Barry M. Sax issued a decision, dated May 22, 2002, in which he concluded it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Department Counsel appealed.

This Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Department Counsel's appeal presents the issue of whether the Administrative Judge's favorable security clearance decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board reverses the Administrative Judge's decision.

Procedural History

The Defense Office of Hearings and Appeals issued to Applicant a Statement of Reasons (SOR) dated December 31, 2001. The SOR was based on Guideline C (Foreign Preference) and Guideline B (Foreign Influence). A hearing was held on April 3, 2002. The Administrative Judge issued a decision, dated May 22, 2002, in which he concluded it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case is before the Board on Department Counsel's appeal from the Judge's favorable decision.

Scope of Review

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the Administrative Judge committed factual or legal error. *See* Directive, Additional Procedural Guidance, Item E3.1.32. *See, e.g.*, ISCR Case No. 00-0050 (July 23, 2001) at pp. 2-3 (discussing reasons why party must raise claims of error with specificity).

When an Administrative Judge's factual findings are challenged, the Board must determine whether "[t]he Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge." Directive, Additional Procedural

Guidance, Item E3.1.32.1. The Board must consider not only whether there is record evidence supporting a Judge's findings, but also whether there is evidence that fairly detracts from the weight of the evidence supporting those findings. *See, e.g.,* ISCR Case No. 99-0205 (October 19, 2000) at p. 2.

When a challenge to an Administrative Judge's rulings or conclusions raises a question of law, the Board's scope of review is plenary. *See* DISCR Case No. 87-2107 (September 29, 1992) at pp. 4-5 (citing federal cases).

Administrative Judge's Findings and Conclusions

For purposes of deciding this appeal, the Board will summarize the Administrative Judge's findings and conclusions.

Applicant is a 46-year-old senior executive of a defense contractor. Applicant is a dual citizen of a foreign country (FC 1) by virtue of his parents' citizenship of that country. Applicant came to the United States with his wife in 1977 to attend college. Applicant became a naturalized U.S. citizen in January 1997. Applicant's wife is a U.S. citizen, as are his two daughters (who were born in the United States).

Applicant's parents and two of his siblings are FC 1 citizens who currently reside in that country. Applicant has another sibling who is an FC 1 citizen residing in another foreign country (FC 2). Other than Applicant's family ties with FC 1, he has no substantial financial or other ties to that country.

Applicant obtained an FC 1 passport in January 1997 to allow him to travel to FC 1 on short notice if either of his elderly parents suffered a health crisis. Applicant used his FC 1 passport once, when his mother became very ill. The circumstances of Applicant's use of his FC 1 passport do not show any preference for FC 1 over the United States. After learning about the Department of Defense's concerns about foreign passports, Applicant promptly took steps to surrender his FC 1 passport. Applicant decided to surrender his FC 1 passport even though he knows that doing so means that if his parents become seriously or terminally ill he will likely not be able to get a visa to enter FC 1 for close to a month. Applicant's decision to surrender his FC 1 passport and renounce his FC 1 citizenship demonstrates a great deal of character and integrity, and shows he places his allegiance to and identification with the United States above that of his family obligations.

The presence of Applicant's family members in FC 1 raises a security concern because that country "is not generally friendly to the United States." There is no evidence suggesting Applicant would submit to pressure to act against the interests of the United States. Applicant considers himself to be an American and will not act against United States interests. Since coming to the United States, Applicant has never acted in any way to suggest he has a preference for FC 1 over the United States. The depth of Applicant's emotional, familial, economic, and other ties with the United States has developed over a quarter century of hard work and dedication to this country's interests.

The absence of any foreign preference makes it less likely that Applicant would respond to undue or improper pressure or persuasion. Applicant has strong ties to the United States, is a man of integrity, understands his obligations to his country, and is unlikely to respond favorably to any attempt to subvert those obligations.

Applicant has demonstrated he possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to classified information.

The Administrative Judge entered formal findings in favor of Applicant with respect to Guideline B and Guideline C and concluded it is clearly consistent with the national interest to grant or continue a security clearance for him.

Appeal Issue

Department Counsel does not challenge the Administrative Judge's favorable formal findings under Guideline C (Foreign Preference). Accordingly, the Board need not address those formal findings on appeal. However, with regard to Guideline B (Foreign Influence) Department Counsel contends the Administrative Judge's favorable security clearance decision is arbitrary, capricious, or contrary to law. In support of that contention, Department Counsel argues:

(1) the record evidence does not support the Judge's application of Foreign Influence Mitigating Condition 1;

- (2) the Judge improperly discounted the security concern raised by the fact that Applicant's family members live in FC 1, a country with an oppressive government that is not friendly to the United States;
- (3) the record evidence does not support the Judge's conclusion that there is no evidence suggesting Applicant would submit to undue pressure and act against United States interests; and
- (4) the Judge's analysis of Foreign Influence Mitigating Condition 1 is arbitrary, capricious, or contrary to law.

In response to Department Counsel's appeal, Applicant asserts:

- (a) the Administrative Judge's decision is supported by reasonable evidence and is not arbitrary, capricious, or contrary to law;
- (b) Applicant presented extensive evidence showing he is trustworthy and has contributed to the national security of the United States;
- (c) Department Counsel is relying on a "second string" argument that it did not consider its best argument during the proceedings below; and
- (d) DOHA precedent favors granting Applicant a security clearance.

The Board will address the appeal arguments in an order different from the order they were made by the parties.

DOHA precedent. The three decisions by DOHA Administrative Judges cited by Applicant are not dispositive of this case. A decision by one DOHA Judge is no more legally binding on another DOHA Judge than a decision by one trial judge is binding on another trial judge. Furthermore, the decisions of DOHA Hearing Office Judges are no more binding on the Board than a decision by a trial court is binding on an appellate court. Accordingly, although the DOHA decisions cited by Applicant may be considered as persuasive authority, they are not legally controlling in this case. *See, e.g.*, ISCR Case No. 01-01331 (February 27, 2002) at p. 3. Furthermore, the three cases cited are easily distinguishable from this case.

Applicant's contribution to the national security. The record evidence concerning Applicant's defense-related work is not particularly relevant to an assessment of his security eligibility. An applicant's expertise or ability to make contributions to defense-related work is not a measure of whether that applicant demonstrates the high degree of judgment, reliability, or trustworthiness that must be reposed in persons granted access to classified information. *See, e.g.*, ISCR Case No. 99-9020 (June 4, 2001) at pp. 7-8. Furthermore, evidence that an applicant has defense-related expertise or ability does not foreclose consideration of evidence that the applicant's conduct or circumstances unrelated to the applicant's expertise or ability raise security concerns. Even an applicant who is capable of making contributions to defense-related projects or contracts may pose a security risk.

Department Counsel's "second string" argument. Applicant contends Department Counsel bases its entire appeal on an argument that was its "second string" argument before the Administrative Judge (*i.e.*, Guideline B). Applicant concedes that this contention is "certainly not dispositive." Applicant's contention lacks persuasive force. When deciding the merits of an appeal, the Board may consider any argument made by either party, regardless of whether the argument reflects a primary, secondary, or fall-back position of the party making it. Furthermore, the Board is free to decide whether a party's argument or position has greater, or lesser, weight or significance than that placed on it by the party.

Foreign Influence Mitigating Condition 1. The Administrative Judge applied Foreign Influence Mitigating Condition 1. [\(1\)](#) Department Counsel makes several arguments in support of its contention that the Administrative Judge erred by applying Foreign Influence Mitigating Condition 1:

- (a) the Judge erred by relying on the absence of evidence that the FC 1 government has not in the past tried to exploit the relationship between Applicant and his family members living in FC 1;
- (b) the Judge erred by discounting the security significance of the fact that FC 1 government has been hostile to the

United States;

(c) the Judge erred by relying on Applicant's testimony that he would not succumb to any pressure the FC 1 government might place on him through his family members living in FC 1; and

(d) because Applicant will need to travel to FC 1 in the future, he will be placed in a position to be exploited by the FC 1 government.

Applicant contends that the Judge's application of Foreign Influence Mitigating Condition 1 is supported by the record evidence and the Judge's favorable assessment of Applicant's credibility. In support of this contention, Applicant argues:

(i) Applicant's brothers in FC 1 are not agents of the FC 1 government;

(ii) the evidence concerning Applicant's brothers in FC 1 "decrease the level of their vulnerability to exploitation and/or the likelihood that they would pressure [Applicant] into a choice of loyalties [between the United States and FC 1]";

(iii) Applicant's elderly parents are not agents of the FC 1 government;

(iv) Applicant's elderly parents do not reside in FC 1 most of the time;

(v) Applicant's elderly parents have permanent U.S. resident status and can easily leave FC 1 and stay away from FC 1 as long as they please;

(vi) apart from Applicant's family members living in FC 1, Applicant has no substantial ties to FC 1 and he has strong ties to and in the United States;

(vii) Applicant has renounced his FC 1 citizenship and surrendered his FC 1 passport;

(viii) it is not likely that Applicant will need or want to travel to FC 1 in the future;

(ix) "it defies comprehension to think that [Applicant] would commit the capital crime of treason and betray [the United States] for the sake of [the] privilege" to be by the side of his elderly parents if they become seriously ill, or to attend their funeral; and

(x) the Administrative Judge had the opportunity to assess Applicant's demeanor and reach the conclusion that Applicant possesses the integrity, judgment, reliability, and trustworthiness necessary to hold a security clearance.

For the reasons that follow, the Board concludes Department Counsel's arguments are generally persuasive.

The Administrative Judge's favorable conclusions under Guideline C (Foreign Preference) are not dispositive of the Guideline B (Foreign Influence) issues in this case. Even in the absence of a foreign preference, the existence of family ties in a foreign country can raise security concerns under Guideline B. Accordingly, Applicant's renunciation of his FC 1 citizenship and surrender of his FC 1 passport do not foreclose consideration of the security significance of Applicant's ties to immediate family members living in FC 1.

The absence of non-family ties in FC 1 does not have the significance Applicant places on it. The SOR did not allege that Applicant has non-family ties to FC 1. Furthermore, the security significance of Applicant's family ties in FC 1 is not diminished by fact that he does not have non-family ties in FC 1. Moreover, Applicant's ties in the United States do not eliminate the security concerns raised by his family ties in FC 1. Applicant has presented no evidence to show that his sense of family obligation to relatives living in FC 1 (including his elderly parents) are diminished by his ties in the United States.

Although Applicant's elderly parents do not reside full-time in FC 1, the record evidence shows they live there for significant periods of time, and are likely to continue to do so for the foreseeable future. On appeal, Applicant essentially concedes that his parents will continue to travel to and reside in FC 1. The permanent U.S. resident status of

Applicant's elderly parents does not negate or diminish the security significance of their travel to and from FC 1 and their residing there for significant periods of time. Furthermore, given the record evidence that Applicant's elderly parents are likely to continue to live in FC 1 and other record evidence in this case, the Board does not find persuasive Applicant's argument that he is not likely to need or want to travel to FC 1 in the future.

Given the record evidence in this case, the Administrative Judge did not err by concluding there is no evidence that Applicant's two brothers or his elderly parents are agents of the FC 1 government. However, that conclusion did not relieve the Administrative Judge of the obligation to consider whether Applicant is at risk of influence, coercion or pressure directed against his two brothers or his elderly parents living in FC 1. An applicant may be vulnerable to influence, coercion, or pressure directed by a foreign government against a person close to the applicant, even if that person has no connection with the foreign government. *See Scarbeck v. United States*, 317 F.2d 546, 548-549 (D.C. Cir. 1963)(defendant pressured to work for foreign intelligence service through threats made against defendant's paramour), *cert. denied*, 374 U.S. 856 (1963). Accordingly, the fact that Applicant's two brothers and his elderly parents are not agents of the FC 1 government is not dispositive, and that fact does not have the significance Applicant seeks to place on it.

Applicant's "treason" argument lacks merit. The federal government has a compelling interest in protecting classified information from unauthorized disclosure. *Department of Navy v. Egan*, 484 U.S. 518, 527 (1988). There are many kinds of conduct and circumstances, short of treason, where an applicant is at risk of deliberately or inadvertently failing to protect or safeguard classified information. *See, e.g.*, various Adjudicative Guidelines. Furthermore, treason has a technical meaning under Article III, Section 3 of the U.S. Constitution which does not cover all types of espionage or deliberate security violations. Moreover, human experience shows that people have engaged in espionage or committed deliberate security violations for a broad range of reasons, including succumbing to threats made by a foreign entity against a third party for whom the target has ties of love or affection (*see* preceding paragraph). Accordingly, there is a nexus or rational connection between an applicant's family ties in a hostile country and the risk that the applicant might fail to protect and safeguard classified information.

Applicant's demeanor argument is not persuasive. An Administrative Judge must assess the demeanor of an applicant as part of the process of weighing the applicant's testimony at a hearing. However, a credibility determination -- whether favorable or unfavorable -- is not a substitute for record evidence. *See, e.g.*, ISCR Case No. 00-0291 (August 13, 2001) at p. 3. Beyond helping a Judge in deciding whether to believe an applicant's testimony, a credibility determination does not have independent evidentiary weight as to the facts of a case. Although the Judge could conclude Applicant was a credible witness who was testifying honestly and sincerely, that conclusion is not a substitute for an analysis of the security significance of the record evidence about Applicant's family ties with relatives in FC 1. The security significance of Applicant's family ties with relatives in FC 1 is not reduced or diminished by Applicant's honesty and candor at the hearing.

Contrary to one of Department Counsel's arguments, the Administrative Judge did not conclude that the FC 1 government had not previously sought to exploit Applicant's relationship with family members in FC 1 to get him to do something improper. Rather, the Judge concluded that Applicant's elderly parents had not sought to use their relationship with him to do something improper. However, that conclusion by the Judge did not relieve the Judge of his obligation to consider whether Applicant's family ties with relatives in FC 1 made Applicant potentially vulnerable to exploitation by the FC 1 government. By focusing on the lack of evidence that Applicant's elderly parents had ever tried to influence him, the Judge failed to consider an important aspect of the case: the risk that the FC 1 government, which is hostile to the United States, could seek to exploit Applicant's family ties with relatives in FC 1.

Department Counsel's argument concerning the hostility of the FC 1 government to the United States has merit. There is no dispute that the FC 1 government is hostile to the United States. Applicant has not even tried to suggest otherwise, during the proceedings below or on appeal. Despite acknowledging the hostility of the FC 1 government toward the United States and its security significance, the Administrative Judge failed to explain why he apparently gave little weight to that fact. After noting the security significance of the hostility of the FC 1 government, the Judge stated the following: "But, because so many Americans have ties to, and/or relatives in, foreign countries, that fact alone is not automatically a concern. It becomes a concern when there [is] some foreseeable risk that the relationship might be exploited to the detriment of the United States." The Judge's reasoning is arbitrary and capricious in part. Whether many

U.S. citizens have ties to, or relatives in, foreign countries is irrelevant to the security significance that the FC 1 government is hostile to the United States. Whether many U.S. citizens have ties to, or relatives in, foreign countries is irrelevant to whether the facts and circumstances of Applicant's family ties to relatives in FC 1 pose a security risk. Department Counsel persuasively argues that the hostility of the FC 1 government to the United States places a very heavy burden on Applicant to show that his family ties with relatives living in FC 1 do not pose a security risk. *See* Directive, Additional Procedural Guidance, Item E3.1.15 ("The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."). The Judge's decision fails to articulate a rational basis for his conclusion that Applicant had satisfied his burden of persuasion in light of the hostility of the government of FC 1 to the United States.

Department Counsel persuasively challenges the Administrative Judge's application of Foreign Influence Mitigating Condition 1. As discussed earlier in this decision, Applicant had the burden of persuasion to show that his family ties with relatives living in FC 1 did not pose a security risk. That burden of persuasion extends to the application of Adjudicative Guideline mitigating conditions, such as Foreign Influence Mitigating Condition 1. *See, e.g.*, ISCR Case No. 00-0484 (February 1, 2002) at p. 3; ISCR Case No. 99-0519 (February 23, 2001) at p. 12. Given the record evidence in this case, including the record evidence that the FC 1 government is hostile to the United States and U.S. citizens, the Judge failed to articulate a rational basis why he concluded Applicant had met his burden of demonstrating the applicability of Foreign Influence Mitigating Condition 1.

It was not arbitrary or capricious for the Administrative Judge to consider Applicant's testimony that he would not succumb to any pressure the FC 1 government might place on him through his family members living in FC 1. However, Department Counsel correctly notes that such testimony must be weighed in light of other record evidence that detracts from it, and that it is not entitled to be accepted at face value because it deals with a hypothetical state of affairs.

Applicant makes a variety of arguments in support of his contention that Department Counsel's appeal is based on "the same logic that lead to the national shame of the Japanese concentration camps (sic) in California after Pearl Harbor." Applicant's arguments have several flaws. First, Applicant is incorrect arguing that the government is seeking to deny or revoke his access to classified information because he was born in FC 1. The SOR issued to Applicant is based on facts and circumstances that go beyond the mere fact that Applicant was born in FC 1. Furthermore, Department Counsel has not argued -- during the proceedings below or on appeal -- that Applicant should be denied access to classified information because he was born in FC 1. Second, this case involves an adjudication of Applicant's security eligibility, not an adjudication of his physical liberty. It is untenable for Applicant to equate these proceedings with a decision to place people in internment camps. Third, Applicant is wrong in arguing that the government's case against him is based on "an irrational fear" triggered by the acts of war committed against the United States on September 11, 2001. Applicant's argument lacks any basis in the record evidence and runs afoul of the general principle that there is a rebuttable presumption that agency officials act in good faith. *See, e.g.*, ISCR Case No. 00-0300 (September 20, 2001) at p. 5. Moreover, the Board notes it has had appeals in cases where SORs based on Guideline B and Guideline C involving conduct and circumstances similar to Applicant's case were issued before September 11, 2001, not just in response to it. The DoD is not required to ignore or disregard the security implications arising from the fact that our country is in the midst of a war against terrorism and that certain countries and groups are openly hostile and pose a threat to the United States. ⁽²⁾ Fourth, there is no basis for Applicant to assert the government is "behaving as maniacally and unfairly as the terrorists themselves do." The enforcement of the industrial security program is predicated on the application of law -- as embodied in Executive Order 10865, the Directive, and applicable principles of federal law. Even if Applicant believes the government is acting incorrectly in this case, such a belief does not provide a reasonable basis for him to suggest the government's actions are no better than the acts of terrorists. Applicant's counsel is entitled to engage in zealous advocacy on behalf of his client. However, counsel goes beyond the pale of legitimate advocacy by comparing the government's handling of his client's case to the lawless, murderous acts of terrorists.

Considering the record evidence as a whole, Applicant can fairly argue that his character and integrity are good and weigh in his favor. Evidence of good character and personal integrity is relevant and material under the whole person concept. *See* Directive, Section 6.3 and Item E2.2.1.1. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a

security risk. Stated otherwise, the government need not prove an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. For example, an applicant with good character and personal integrity may pose a security risk if the applicant suffers from a mental illness or condition that impairs the applicant's judgment and reliability. Similarly, an applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country hostile to the United States. *See Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988). Department Counsel is not required to present evidence that Applicant *would* compromise classified information if the FC 1 government made threats against his family members living in FC 1 or threatened to prevent him from visiting his elderly parents in FC 1. The federal government is not required to wait until a hostile foreign country makes threats against an applicant or the applicant's immediate family members and then see how the applicant reacts or responds to such threats. *Cf. Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)(government need not wait until a person mishandles or fails to safeguard classified information before it can make an adverse security clearance decision), *cert. denied*, 397 U.S. 1039 (1970). All that is required is evidence that Applicant is in a situation that poses a security risk. To require a stronger showing would result in the untenable situation that the federal government would have to grant access to classified information until or unless there is evidence that an applicant has actually failed to protect and safeguard classified information, or until or unless persons in hostile countries are actively engaging in attempts to gain access to classified information from an applicant through the use of threats and intimidation toward that applicant's relatives.

As a matter of common sense and sound risk management under the "clearly consistent with the national interest" standard, an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk. Given the undisputed hostility of the FC 1 government to the United States, the fact that Applicant has elderly parents and two brothers living in FC 1 places a heavy burden on him to demonstrate he should be granted access to classified information. In this case, the record evidence does not provide the Administrative Judge with a rational basis for his conclusion that Applicant has met that heavy burden.

Considering Applicant's arguments as a whole, they raise the issue of possible injustice to him if the government were to deny him access to classified information. It may well be that no system of security clearance decisions can be perfect or always right. When faced with that reality, the federal government must subordinate the interests of individuals to the interests of U.S. citizens as a whole in a strong and effective national security. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988)(in making security clearance decisions, government should resolve doubts in favor of the national security). Department Counsel has raised arguments which show the Judge failed to articulate a rational basis for his favorable conclusions about the security significance of the facts and circumstances of Applicant's family ties to relatives in FC 1. Viewing the record evidence in a light most favorable to Applicant (the nonappealing party), the Judge's sustainable findings and conclusions would, at most, indicate this could be seen as a close case. However, under "the clearly consistent with the national interest" standard, close cases must be resolved in favor of the national security, not in favor of applicants. *See, e.g.*, ISCR Case No. 98-0419 (April 30, 1999) at p. 8.

Guideline B. Department Counsel also contends that the Administrative Judge's favorable conclusions under Guideline B are arbitrary, capricious, or contrary to law. However, in support of this contention, Department Counsel offers an argument that adds little to its other arguments. No useful purpose would be served by repeating the Board's earlier discussion. For the reasons set forth earlier in this decision, the Judge's favorable conclusions under Guideline B are not sustainable.

Conclusion

Considering the record evidence as a whole, Department Counsel has identified a number of errors by the Administrative Judge which, taken in their entirety, warrant reversal of the Judge's favorable security clearance decision. Pursuant to Item E3.1.33.3 of the Directive's Additional Procedural Guidance, the Board reverses the Judge's favorable security clearance decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

1. "A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States."
2. As a matter of common sense, security clearance adjudications cannot be made without regard to the security implications of the acts of war committed against the United States on September 11, 2001, and the war against terrorism. The official positions taken by the President of the United States and other appropriate federal officials concerning the war on terrorism are not proper subjects to be litigated in DOHA proceedings. *See, e.g.*, ISCR Case No. 98-0648 (July 12, 1999) at p. 3 (DOHA proceedings are not a proper forum to adjudicate matters committed to the jurisdiction and authority of another governmental body). However, official or administrative notice can be taken of authoritative statements or documents made or issued by the President of the United States or appropriate federal departments, agencies, or officials concerning the war against terrorism and related matters. Of course, such action should be undertaken with reasonable notice to applicants to avoid undue surprise or unfairness in these proceedings.