

DATE: December 7, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26130

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 13, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline B (Foreign Influence), pursuant to Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 31, 2006, after the hearing, Administrative Judge Charles D. Ablard granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Administrative Judge's decision to grant Applicant a clearance was arbitrary, capricious, or contrary to law. We reverse the Administrative Judge's decision to grant the clearance.

Whether the Record Supports the Administrative Judge's Factual Findings

A. Facts

The Administrative Judge found the following:

Applicant is a 45-year-old employee of a major defense contractor who has worked as a systems engineer since 1980. Applicant was born in the Palestinian area and, at the age of 14, emigrated to the U.S. along with his family. Applicant's father retired from a textile mill in the U.S. in 1982 and returned to his home near Jerusalem, in a sector of the West Bank under the security control of Israel. The father receives social security checks from the U.S. government, and Applicant sends him money-in amounts of \$300 to \$500-twice a year. Applicant's mother is dead.

Applicant has seven siblings, all of whom are U.S. citizens and all but one of whom reside in the U.S. One sister, also a U.S. citizen, lives in the same village as Applicant's father, as do two aunts and several cousins. Applicant's mother-in-law also lives in that village. Applicant has numerous cousins, some of whom reside in Palestinian areas but over 60 of whom live in the US. Applicant's wife's cousins live in Palestinian areas.

He has traveled to his father's village approximately 10 times between 1998 and 2001. During this time his wife and (then) three children lived with Applicant's parents tending to the mother, who was ill and who died in 2000. Applicant

has not traveled outside the U.S. since 2001. "Israel and the areas of the West Bank and Gaza are politically volatile and dangerous places to live." None of Applicant's family members have any relations with government authorities. Applicant has held a security clearance since 1992 and has never had a security violation. Applicant's home and investments are in the U.S. and are worth a total of approximately \$750,000.

B. Discussion

The Appeal Board's review of the Administrative Judge's finding of facts is limited to determining if they are supported by substantial evidence--such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620-21, 86 S. Ct. 1018, 16 L. Ed. 2d 131 (1966)). In evaluating the Administrative Judge's findings, we are required to give deference to the Administrative Judge's credibility determinations. Directive ¶ E3.1.32.1.

The Administrative Judge's findings of fact are not challenged on appeal.

Whether the Record Supports the Administrative Judge's Ultimate Conclusion

An Administrative Judge is required to "examine the relevant data and articulate 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 Appeal Board may reverse the Administrative Judge's decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. Our scope of review under this standard is narrow and we may not substitute our judgment for that of the Administrative Judge. We may not set aside an Administrative Judge's decision "that is rational, based on consideration of the relevant factors, and within the scope of the authority delegated to the agency ..." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 42. We review matters of law *de novo*.

Department Counsel's appeal raises the issue of whether the Administrative Judge's favorable decision is arbitrary, capricious or contrary to law. We conclude that it is.

The Judge's decision is deficient in a vital aspect. It fails to take adequate account of the situation in and nature of the areas in which Applicant's West Bank relatives reside. The record includes official U.S. documents regarding the activities of US-designated foreign terrorist organizations including Hamas, Palestinian Islamic Jihad, the al-Aksa Martyrs Brigade and the Popular Front for the Liberation of Palestine. The Judge's conclusions do not address the pertinence of these matters to the presence of Applicant's family. ⁽¹⁾

The Board has held "A whole-person analysis should include reasonable consideration of the situation in and nature of the country involved." ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) . The Board has also held "In Foreign Influence cases, the nature of the foreign government involved in the case, the intelligence gathering history of that government, and the presence of terrorist activity is important evidence that provides context for the other evidence of record and must be brought to bear on the Judge's ultimate conclusions in the case." ISCR Case No 04-08560 at 4 (App. Bd. Oct. 10, 2006). The Judge's failure in this case to consider the implications of terrorist activity in the West Bank renders his analysis moot. The Board has noted, in a recent case, how the activities of Hamas in the West Bank can be pertinent to a security clearance adjudication in a Guideline B case. ISCR Case No. 02-30369 at 4-7 (App. Bd. Oct 27, 2006).

Order

The judgment of the Administrative Judge granting Applicant a clearance is REVERSED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board

1. The record closed before Hamas's election victory and consequent assumption of authority, and the Judge's decision makes no reference to it.