

DATE: June 12, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28838

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esq., Department Counsel

FOR APPLICANT

David E. Kindermann, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 8, 2005, after the hearing, Administrative Judge Joan Caton Anthony denied Applicant's request for a security clearance. [\(1\)](#) Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Administrative Judge erred in concluding that the security concerns raised under Guideline B had not been mitigated.

Applicant argues that the evidence he provided in the proceeding below was sufficient to require the Administrative Judge to conclude, as a matter of law, that he had rebutted, mitigated or extenuated the security concerns under Guideline B (Foreign Influence). The Board does not find this argument persuasive.

The Administrative Judge made the following sustainable findings. Applicant's 72 year old mother is a citizen of Iran, residing in Iran. Applicant's deceased father was an official in the Iranian government under the late Shah. Applicant is close to his mother and speaks with her by telephone approximately once every two months. Applicant's children speak with her approximately one to two times per month. Applicant has encouraged his mother to immigrate to the U.S. and, in August 2004, Applicant received notice that his request that his mother be granted immigrant status had been approved. Applicant has been advised it may be two years before his mother is issued a visa number and can leave Iran. The U.S. government prohibits most trade with Iran, and objects to Iran's support for and involvement with international terrorism; its attempts to acquire nuclear weapons and other weapons of mass destruction; its support for violent opposition to the Middle East peace process; and its negative human rights record.

Given those findings, the Administrative Judge concluded that Applicant's ties with those immediate family members raised security concerns under Guideline B and that Disqualifying Condition 1 applied. That conclusion shifted the burden of persuasion to Applicant. If there are admitted or proven facts and circumstances that raise security concerns, "[t]he 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." Directive, Item E3.1.15.

Applicant argues that his contacts with his mother are casual and infrequent, and that she is not in a position to be exploited.

There is a rebuttable presumption that contacts with immediate family members are not casual. *See, e.g.*, ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Given the record in this case, Applicant's arguments do not demonstrate that it was arbitrary, capricious, or contrary to law for the Administrative Judge to conclude that Applicant had not met his burden of establishing that his contacts with his mother were casual and infrequent.

Likewise, Applicant's arguments do not demonstrate that it was arbitrary, capricious, or contrary to law for the Judge to conclude that Applicant had not met his burden of establishing that his mother was not in a position to be exploited by a foreign power in a way that could force her to choose between loyalty to those relatives and the United States. Mere disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate error without a showing that the Judge's weighing of the evidence was arbitrary, capricious, or contrary to law.

There is a rebuttable presumption that an Administrative Judge considered all the record evidence unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 99-9020 at 2 (App. Bd. Jun. 4, 2001). Applicant's ability to cite to record evidence that he contends should have been given greater weight is not sufficient to overcome that rebuttable presumption in this case. Merely because an Judge does not give greater weight to record evidence cited by the appealing party, it does not follow that the Judge simply ignored that evidence. Moreover, to the extent Applicant's argument can be construed as challenging the Judge's weighing of the record evidence, it fails to establish that the Judge weighed the record evidence in a manner that is arbitrary, capricious, or contrary to law.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman (Acting), Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in Applicant's favor under Guideline F. That favorable finding is not at issue on appeal.