

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19101

APPEAL BOARD DECISION AND REMAND ORDER

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR), dated September 30, 2004, which stated the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. The SOR was based on Guideline C (Foreign Preference) and Guideline B (Foreign Influence). Administrative Judge Kathryn Moen Braeman issued a favorable security clearance decision, dated May 23, 2005.

Department Counsel appealed the Administrative Judge's favorable decision. The Board has jurisdiction under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

The following issues have been raised on appeal: (1) whether the Administrative Judge's conclusion that Applicant's possession, renewal, and use of his Israeli passport were sufficiently mitigated is unsupported by the record evidence and is arbitrary and capricious; (2) whether the Administrative Judge's application of Foreign Influence Mitigating Condition 1 is unsupported by the record evidence and is arbitrary and capricious; (3) whether the Administrative Judge's application of Foreign Influence Mitigating Condition 3 is unsupported by the record evidence and is arbitrary and capricious; and (4) whether the Administrative Judge's decision is sustainable under the "whole person" concept. For the reasons that follow, the Board remands the case to the Administrative Judge for further processing.

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. Directive, Additional Procedural Guidance, Item E3.1.32. *See also* ISCR Case No. 00-0050 (July 23, 2001) at pp. 2-3 (discussing reasons why party must raise claims of error with specificity).

When the rulings or conclusions of an Administrative Judge are challenged, the Board must consider whether they are: (1) arbitrary or capricious; or (2) contrary to law. Directive, Additional Procedural Guidance, Item E3.1.32.3. In deciding whether the Judge's rulings or conclusions are arbitrary or capricious, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider

relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 97-0435 (July 14, 1998) at p. 3 (citing Supreme Court decision). In deciding whether the Judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. Compliance with state or local law is not required because security clearance adjudications are conducted by the Department of Defense pursuant to federal law. *See* U.S. Constitution, Article VI, clause 2 (Supremacy Clause). *See, e.g.*, ISCR Case No. 00-0423 (June 8, 2001) at p. 3 (citing Supreme Court decisions).

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 the same record. 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, and whether the Judge's findings reflect a reasonable interpretation of the record evidence as a whole. Although a Judge's credibility determination is not immune from review, the party challenging a Judge's credibility determination has a heavy burden on appeal.

When an appeal issue 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).

If an appealing party demonstrates factual or legal error, then the Board must consider the following questions:

Is the error harmful or harmless? *See, e.g.*, ISCR Case No. 00-0250 (July 11, 2001) at p. 6 (discussing harmless error doctrine);

Has the nonappealing party made a persuasive argument for how the Administrative Judge's decision can be affirmed on alternate grounds? *See, e.g.*, ISCR Case No. 99-0454 (October 17, 2000) at p. 6 (citing federal cases); and

If the Administrative Judge's decision cannot be affirmed, should the case be reversed or remanded? (Directive, Additional Procedural Guidance, Items E3.1.33.2 and E3.1.33.3).

Administrative Judge's Findings and Conclusions

Before addressing the appeal issues, it is useful to note the findings and conclusions of the Administrative Judge that are pertinent to the issues raised on appeal.

The Administrative Judge found that: (a) Applicant became a citizen of Israel by virtue of his birth there in 1952; (b) he came to the United States in 1980 and became a naturalized U.S. citizen in 1984; (c) for several years he maintained his dual citizenship with the United States and Israel; (d) his mother and his sister are citizens and residents of Israel; (e) his mother is a housewife who has never worked outside the home and his sister is also a housewife who also works as a part-time secretary in the Ministry of Religions; (f) Applicant visits his mother once a year and speaks to her every week or two for 15-20 minutes; (g) Applicant sees his sister once a year and he speaks to her every two months; (h) the United States is Applicant's country of choice for residence and living; (i) Applicant has never voted in any election in Israel and has no financial interests in Israel; (j) as required by Israeli law, Applicant renewed his Israeli passport after becoming a U.S. citizen and used his Israeli passport only to enter and exit Israel; (k) Applicant has visited Israel seven times since 1995; (l) Applicant does not remember getting the ASDC3I memo⁽¹⁾ with his SOR that explained the DoD security policy prohibiting use or possession of a foreign passport, and no evidence was provided that he ever received it; (m) even though the ASDC3I memo was issued in 2000, Applicant was never advised by his corporate security officials or the Defense Security Service (DSS) that dual citizenship and use of a foreign passport raised a security concern and that foreign passport relinquishment was required by DoD policy; (n) In a statement to DSS in 1992 and in a DSS interview in 2003, Applicant indicated, respectively, his willingness to relinquish his Israeli citizenship and his Israeli passport; (o) Applicant took no action to relinquish either his Israeli citizenship or his Israeli passport until he

understood the DoD policy in January 2005 when Department Counsel explained to him the requirement to surrender his foreign passport; (p) Applicant credibly explained that had he been informed earlier of this security policy, he would have acted earlier; (q) in January 2005 Applicant immediately began the process of renouncing his Israeli citizenship and relinquishing his passport; (r) his request to waive his Israeli citizenship was approved in March 2005 and on April 13, 2005 he submitted his Israeli passport to the consulate and received his citizenship waiver document; (s) Israel is a parliamentary democracy, a long-term ally of the United States and the U.S. has expressed its commitment to Israel's security and well-being; (t) the U.S.-Israel relationship has not been free of friction; and (u) Israel has been an active collector of intelligence.

The Administrative Judge concluded: (i) because Applicant immediately began the steps to renounce his Israeli citizenship and passport in January 2005 once he understood the U.S. security concerns, and completed the process of renunciation, Foreign Preference Mitigating Condition 4⁽²⁾ applies; (ii) at the same time, Applicant has complied with the steps required by the ASDC3I memo; (iii) he has demonstrated a strong preference for the U.S. over any other foreign nation by giving up his Israeli citizenship even though he has an elderly mother who remains in Israel; (iv) Applicant has lived and worked in the U.S. since 1980 and all his financial assets and his immediate family are in the U.S.; (v) Applicant's conduct was not undertaken in such a way as to establish his preference for a foreign country over the U.S.; (vi) as Applicant's mother and sister are immediate family members who are citizens of and reside in a foreign country, Department Counsel has established that Foreign Influence Disqualifying Condition 1⁽³⁾ applies; (vii) Applicant maintains credibly that he could not be pressured simply because his mother and sister are residents of and citizens of Israel; (viii) neither Applicant's mother nor his sister are agents of the Israeli government or can be exploited by Israel by coercive or non-coercive means; (ix) Applicant's mother is elderly and not dependent upon him for support; (x) his annual visits with his mother and sister are not frequent and his phone calls merely address concerns of their health; (xi) Applicant credibly testified that in the past no clandestine efforts have been made by Israel to seek information from him; (xii) given Applicant's ties to the U.S. over a long period of time, it is improbable that either of his family members would create a situation that could result in the compromise of classified information; (xiii) Applicant persuasively declared that if he were ever approached by anyone seeking information on his classified work, he would report it; (xiv) Foreign Influence Mitigating Conditions 1⁽⁴⁾ and 3⁽⁵⁾ apply to the case; (xv) Applicant's ties are not of such a nature as to create any tangible risks of undue pressure and do not invoke foreign influence concerns.

Appeal Issues

1. Whether the Administrative Judge's conclusion that Applicant's possession, renewal and use of his Israeli passport were sufficiently mitigated is unsupported by the record evidence and is arbitrary and capricious. On appeal, Department Counsel argues that the Administrative Judge erred by concluding that Applicant's possession, renewal, and use of an Israeli passport were mitigated by his action to relinquish the passport and renounce his Israeli citizenship once he understood the DoD policy that disqualified foreign passport holders from obtaining security clearances as expressed in the ASDC3I memo. Specifically, Department Counsel argues: (a) the Administrative Judge's reliance on Applicant's ignorance of the security consequences of his use of an Israeli passport is misplaced; (b) the Judge's conclusion about Applicant's ignorance is undercut by the fact that Applicant chose to use the passport and hold himself out as an Israeli citizen when he was aware that such conduct may negatively affect his security clearance eligibility; and (c) Applicant's "eleventh hour" surrender of his passport and renunciation of his citizenship did not mitigate his pre-renunciation conduct which demonstrated a foreign preference. The Board concludes that Department Counsel has failed to establish error on the part of the Judge.

Regarding Applicant's ignorance of the implications of his simultaneous possession of an Israeli passport and a security clearance, the Directive specifically makes consideration of an Applicant's motivation relevant to a security clearance decision. *See*, Directive, Section 6.3.4.; E2.2.1.7. Accordingly, an Applicant's understanding about the facts and circumstances of his situation can be relevant to the extent they have probative value as to his motivations, in this case the depths of his desire to retain Israeli citizenship and an Israeli passport. Of course, an applicant's opinions about the security significance of his conduct or situation do not relieve a Judge of the obligation to consider and weigh the security significance of the facts and circumstances of an applicant's case. *See, e.g.*, ISCR Case No. 98-0331 (May 26, 1999) at p. 4 n.4. After a review of the record evidence and the Judge's decision, the Board is not convinced that the Judge weighed the evidence of Applicant's ignorance of the policies expressed in the ASDC3I memo and weighed other

evidence of Applicant's conduct in a manner that was arbitrary or capricious. Additionally, contrary to Department Counsel's appeal assertion, the record evidence is not such that the Administrative Judge was required to find that Applicant was aware following his 2003 DSS interview that his possession and use of an Israeli passport presented a security problem. Department Counsel's interpretation of the record evidence on this point, though different from the Judge's, does not establish that the Judge erred.

Given the record evidence that Applicant has surrendered his Israeli passport, application of the ASDC3I memo would not mandate an unfavorable security clearance decision. Department Counsel argues however, that the circumstances of Applicant's taking steps to renounce his Israeli citizenship and surrender the passport-principally the fact that Applicant did so recently and only when required to do so by DoD-render arbitrary and capricious the Judge's conclusion that this conduct mitigated the security concerns under the Foreign Preference Guideline. In concluding Applicant had mitigated the security concerns raised by his acts of foreign preference, the Administrative Judge referred to several matters, including the fact that Applicant had strong ties and loyalties to the United States, the fact that Applicant surrendered his passport and renounced Israeli citizenship before the close of the record and the fact that his lack of awareness concerning the policy expressed in the ASDC3I memo may have affected the timing of his renunciation actions. There are no stated requirements in the ASDC3I memo concerning when an applicant is required to comply with its provisions. The Board need not agree with the Judge's conclusion that the foreign preference concerns in the case were mitigated to conclude that her resolution of the matter was supported by the record and was not arbitrary or capricious.

2. Whether the Administrative Judge's application of Foreign Influence Mitigating Condition 1 is unsupported by the record evidence and is arbitrary and capricious. Regarding the "first prong" of Foreign Influence Mitigating Condition 1 (whether immediate family members are agents of a foreign power), the Administrative Judge found that Applicant's sister in Israel works as a part-time secretary in the Ministry of Religions and that this was a government position. In her conclusions section, the Judge later stated that neither Applicant's mother nor his sister were agents of the Israeli government. On appeal, Department Counsel asserts that the Judge's conclusion is erroneous. Department Counsel's contention has merit.

Having found that Applicant's sister was an employee of the government, the Administrative Judge articulated no rational basis for her conclusion that Applicant's sister was not an agent of a foreign power. The Judge's observation in her conclusions, "[w]hile his sister has a part time job with the government, she works in a clerical position," suggests that the Judge focused on the nature of the position held by the sister in reaching her conclusion. An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for the purposes of Foreign Influence Mitigating Condition 1. *See, e.g.,* ISCR Case No. 02-24254 (June 29, 2004) at pp. 5-6. Given the record evidence and her finding, the Judge's conclusion regarding the first prong of Foreign Influence Mitigating Condition 1 was arbitrary and capricious.

Regarding the Administrative Judge's application of the "second prong" of Foreign Influence Mitigating Condition 1 (whether immediate family members are 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 and loyalty to the United States), Department Counsel alleges that the Judge failed to hold the Applicant to his mitigation burden when evaluating the security concerns in the case. Department Counsel argues that the Judge's conclusion that neither Applicant's mother nor his sister can be exploited by Israel by coercive or non-coercive means is conclusory and is not adequately supported by the Judge's findings regarding Israel's aggressive intelligence posture, the age of Applicant's mother, the fact that Applicant's mother is not dependent upon Applicant for support, the financial dependence of Applicant's mother and sister on the government of Israel, and Applicant's statement as to what actions he would take if he were ever approached by anyone seeking information. Department Counsel's contentions have merit.

Department Counsel persuasively argues that there is insufficient evidence in the record to support the Administrative Judge's conclusion that Applicant's family members are not in a position to be exploited by the Israeli government. In her conclusions, the Judge states that Israel has been a long-term ally of the United States with substantial annual direct aid. However, the Judge does not discuss or comment upon her own earlier finding that Israel is one of the most active intelligence gatherers and she does not articulate a rational basis for her conclusion that Applicant's relatives do not pose a security risk notwithstanding Israel's intelligence posture. Additionally, the Judge cites to the facts that Applicant's mother is elderly and not dependent for Applicant for her support as reasons that mitigate against any security risk.

However, the Judge does not articulate a rational basis for her conclusions that Applicant's mother's age and her lack of financial dependency on Applicant mitigate the government's security concerns.

The Administrative Judge concluded that the government's security concerns were mitigated in the case by Applicant's persuasive declaration that he would report any attempts to exploit him. Statements by an applicant about what he or she will do in the future in response to any attempt to exploit his or her family ties, however sincere or credible, cannot be taken simply at face value. For the purposes of applying Foreign Influence Mitigating Condition 1, an applicant's stated intention about what he or she might do in the future under some hypothetical set of circumstances is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the Applicant has acted in a similar manner in the past under similar circumstances. *See, e.g.*, ISCR Case No. 02-26826 (November 12, 2003) at pp. 5-6. Moreover, the Judge's focus on what choice Applicant would make if he were approached by anyone seeking information falls outside the inquiry of Foreign Influence Mitigating Condition 1, where the issue is not what choice an applicant will make once placed in the position of choosing, but rather whether circumstances exist that might require an applicant to make that choice.

In her conclusions section, the Administrative Judge also mentioned the fact that Applicant credibly testified that in the past, no clandestine efforts have been made by Israel to seek information from him. For purposes of applying Foreign Influence Mitigating Condition 1, the Judge's reliance on this finding was error. Applicant's vulnerability to possible foreign influence through his relatives in Israel is the same whether or not the Israeli government has sought to exert such influence or pressure in the past. *See, e.g.*, ISCR Case No. 03-16516 (November 26, 2004) at p. 7.

Other than the matters discussed in the three preceding paragraphs, the Administrative Judge offers no other rationale for her conclusion that the second prong of Foreign Influence Mitigating Condition 1 has been satisfied in this case. Applicant has the burden of demonstrating that a mitigating condition under the Adjudicative Guidelines applies. *See, e.g.*, ISCR case No. 00-0484 (February 1, 2002) at p. 3. The Judge fails to articulate a sustainable rationale for the application of the second prong of Foreign Influence Mitigating Condition 1.

3. Whether the Administrative Judge's application of Foreign Influence Mitigating Condition 3 is unsupported by the record evidence and is arbitrary and capricious. Department Counsel argues that by applying Foreign Influence Mitigating Condition 3, the Judge erroneously concluded that Applicant's contacts with his mother and sister are casual and not frequent. Department Counsel's contention has merit.

The Administrative Judge's application of Foreign Influence Mitigating Condition 3 is arbitrary and capricious. There is a rebuttable presumption that contacts with immediate family members are not casual. *See, e.g.*, ISCR Case No. 00-0484 (February 1, 2002) at p. 5. Given the record evidence in this case concerning Applicant's contacts with his mother and sister in Israel, and the Judge's own findings of fact about those contacts, the Judge's perfunctory conclusion that Applicant's contacts were not frequent and were casual in nature is arbitrary and capricious.⁽⁷⁾ Given the record evidence in this case, and the Judge's own findings about Applicant's contacts with his immediate family members in Israel, there is no rational basis for the Judge's application of Foreign Influence Mitigating Condition 3.

4. Whether the Administrative Judge's decision is sustainable under the "whole person" concept. In his reply brief, Applicant argues: (a) he has been a United States citizen for over 20 years; (b) all of his financial assets and immediate family are in the United States; (c) he has previously held a security clearance on two occasions without incident or concern; (d) he has recently demonstrated a commitment to the United States by surrendering his Israeli passport and renouncing his Israeli citizenship, and (e) his recent involvement with the security clearance process has focused his awareness on the concerns presented by his circumstances and the need to immediately report any suspicious contacts or activities. The Board construes this argument as raising the issue of whether the Administrative Judge's decision is sustainable under the "whole person" concept.

As indicated in preceding sections of this decision, the Administrative Judge erred in her application of pertinent provisions of the Adjudicative Guidelines (Foreign Influence Mitigating Conditions 1 and 3). The error is not harmless in that the Judge relied heavily on those two mitigating conditions in reaching her ultimate security clearance decision. Absent the applicability of those conditions, there is a significant chance that the Judge could have reached a different result based upon the record as a whole.⁽⁸⁾ The continued viability of the Judge's favorable conclusions about

Applicant's security eligibility under Guideline B turns on whether the Judge articulated a rational basis for those favorable conclusions that is consistent with a "whole person" analysis in light of the record evidence as a whole. For the reasons that follow, the Board concludes Department Counsel has failed to demonstrate the Administrative Judge's analysis of Applicant's security eligibility under the "whole person" concept warrants reversal.

An Administrative Judge must apply pertinent Adjudicative Guidelines disqualifying and mitigating conditions.⁽⁹⁾ However, a Judge's obligation to apply pertinent provisions of the Adjudicative Guidelines does not override the Judge's obligation to evaluate an applicant's security eligibility in light of the "whole person" concept.⁽¹⁰⁾ Accordingly, the mere presence or absence of an Adjudicative Guidelines disqualifying or mitigating condition is not solely dispositive of a case.⁽¹¹⁾ Even if there is an Adjudicative Guidelines disqualifying or mitigating condition that is applicable, a Judge must consider the applicable disqualifying or mitigating condition in light of the record evidence as a whole and any pertinent general factors,⁽¹²⁾ and decide what weight can reasonably be given to the applicable disqualifying or mitigating condition.⁽¹³⁾ And, if a Judge reasonably concludes that particular Adjudicative Guidelines disqualifying or mitigating conditions do not apply to the specific facts of a case, the Judge still must evaluate the applicant's security eligibility under the general factors of Directive, Section 6.3 and Adjudicative Guidelines, Item E2.2.1 (which refers to the "whole person" concept).⁽¹⁴⁾

In view of the foregoing, the Board's conclusion that Department Counsel has demonstrated error in the Administrative Judge's application of the Adjudicative Guidelines does not foreclose Applicant from arguing that the Judge's decision is sustainable under the "whole person" concept, which Applicant does in his reply brief. The Board concludes that the Judge's error concerning the Adjudicative Guidelines influenced her "whole person" analysis of Applicant's security eligibility, but that the Judge's errors did not significantly under cut her "whole person" analysis to warrant reversal. Accordingly, the Board remands the case to the Judge with instructions to issue a new decision after correction of the errors identified in this Decision and Remand Order.

Conclusion

Department Counsel has demonstrated error below that warrants remand. Pursuant to Directive, Additional Procedural Guidance, Item E3.1.32.3, the Board remands the case to the Administrative Judge for issuance of a new decision, consistent with the requirements of Directive, Additional Procedural Guidance, Items E3.1.33.2 and E3.1.35.

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

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. On August 16, 2000, Assistant Secretary of Defense for Command, Control, Communications and Intelligence Arthur L. Money issued clarifying guidance (the ASDC3I memo) stating that a person who possesses a foreign passport should be disqualified from holding a clearance "unless the applicant surrenders the foreign passport."
2. "Individual has expressed a willingness to renounce dual citizenship."
3. "An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country."
4. "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."
5. "Contact and correspondence with foreign citizens are casual and infrequent."
6. Department Counsel appears to cite ISCR Case No. 99-0511 for the proposition that Applicant's ignorance of the security consequences of his use of his Israeli passport is of no relevance to the case. This reading is too restrictive. That case found only that, given the specific facts and circumstances in the record, the Administrative Judge erred by placing too much weight on such evidence, not by considering the evidence. Moreover, ISCR Case No. 99-0511 is distinguishable on its facts in that, unlike the instant case, Applicant had not surrendered his foreign passport prior to the close of the record in the case.
7. As discussed earlier in this decision, an Administrative Judge's decision is arbitrary and capricious if: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion.
8. *Compare* ISCR Case No. 02-27133 (March 3, 2005) at p. 4; ISCR Case No. 00-0250 (July 11, 2001) at p. 6.
9. *See* Directive, Section 6.3 and Additional Procedural Guidance, Item E3.1.25.
10. The Adjudicative Guidelines contains language that explicitly states the evaluation of an applicant's security eligibility must include consideration of all available information in light of the "whole person" concept. *See* Directive, Adjudicative Guidelines, Item E2.2.1. The Administrative Judge's obligation to apply pertinent provisions of the Adjudicative Guidelines does not diminish the Judge's obligation to evaluate an applicant's security eligibility in light of the "whole person" concept. Those two obligations are complementary, not exclusive, in nature.
11. *See, e.g.*, ISCR Case No. 02-09389 (December 29, 2004) at p. 4; ISCR Case No. 02-32006 (October 28, 2004) at p. 5.
12. Directive, Section 6.3 and Adjudicative Guidelines, Item E2.2.1.
13. *See, e.g.*, ISCR Case No. 02-5110 (March 22, 2004) at pp. 4-6; ISCR Case No. 01-08565 (March 7, 2003) at p. 5.
14. *See, e.g.*, ISCR Case No. 03-11448 (August 10, 2004) at pp. 3-4.