

DATE: October 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19101

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 30, 2004, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence), pursuant to Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 23, 2005, after the hearing, Administrative Judge Katherine Moen Braeman granted Applicant's request for a security clearance. On January 31, 2006, the Appeal Board remanded the case to the Administrative Judge. On April 14, 2006, the Administrative Judge again granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. [\(1\)](#)

Department Counsel raised the following issue on appeal: whether the Administrative Judge's favorable clearance decision is arbitrary, capricious or contrary to law.

Department Counsel argues that the Administrative Judge erred in her favorable application of whole person concept. [\(2\)](#) In that regard, it is Department Counsel's position that the individual factors which the Judge relied upon either do not readily suggest refutation, extenuation, or mitigation of the government's security concerns, or have low probative value. In response, the Applicant argues that the factors cited by the Judge, along with the other evidence of record, is sufficient to support the Judge favorable clearance decision. On appeal, Applicant also offers new evidence that his mother is now deceased and his sister no longer works for the Israeli Ministry of Religion. The Board does not find Department Counsel's argument persuasive.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. Accordingly, we may not consider the change in status of Applicant's foreign family ties, and the impact that it might have on the security concerns presented in his case.

In her whole person analysis in this case, the Administrative Judge relied on numerous unchallenged findings of facts which cumulatively support the Judge's ultimate conclusion that Applicant has sufficiently strong ties to the United States to overcome the government's security concerns. These facts include the following: Applicant has been a naturalized U.S. citizen since 1984. His immediate family members (wife and two children) are legally located in the U.S., as are all of his financial ties. Applicant had previously held security clearances in 1992 and 1995 without

incident. He has renounced his Israeli citizenship and surrendered his Israeli passport. He testified credibly as to his firm commitment to the United States, and his willingness and ability to report and resist any attempt at coercion or exploitation.

The Administrative Judge also found, based upon the government's evidence, that Israel is an active collector or foreign economic intelligence; it is a parliamentary democracy with a modern economy and a long-term ally of the United States.

Department Counsel offers a rational alternative interpretation of the record evidence. However, that alternative interpretation of the record evidence is insufficient to render the Administrative Judge's interpretation arbitrary, capricious, or contrary to law. Given the record that was before her, the Administrative Judge has articulated a rational explanation for her favorable determination under the whole person concept. The Board need not agree with the Judge's whole person analysis to conclude that it is sustainable.

Order

The Administrative Judge's favorable security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, 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. In our January 31, 2006 decision, the Board sustained the Administrative Judge's favorable finding under Guideline C. That favorable finding is not at issue in this appeal.
2. Directive ¶¶ E2.2.1.1 through E2.2.1.9.