

DATE: May 10, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23259

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

#### FOR APPLICANT

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 8, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested a hearing. On November 8, 2005, after the hearing, Administrative Judge James A. Young denied Applicant's request for a security clearance. 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 his application of Guideline B (Foreign Influence) mitigating condition (MC1)1 [\(1\)](#) because it is "unfair" and it is based on an assumption; and whether the Administrative Judge properly considered Applicant's ties to and conduct in the United States.

The Administrative Judge found and Applicant does not challenge the following:

Applicant is a 58-year-old electrical engineer who has held a security clearance continuously since 1982. He is well respected by his employer and supervisors for his honesty and loyalty as a U.S. citizen. Applicant was born and raised in Iran. Applicant came to the United States in 1971. He returned to Iran in 1979 for business reasons and in 1980 to marry an Iranian citizen. Applicant became a U.S. citizen in 1982 and he has not traveled back to Iran since then nor has he held an Iranian passport. His wife became a U.S. citizen in 1988. Applicant's wife last traveled to Iran in 2004.

Applicant's mother and five siblings live in Iran. None of them has visited him in the U.S. Applicant is trying to get them into the U.S. as residents. Applicant loves his mother and other family members and on occasion sends his mother money and medicines.

Applicant's mother-in-law, two brothers-in-law and one sister-in-law are all Iranian citizen residents. One sister-in-law and her daughter have visited Applicant and his family in the U.S. Applicant does not own any property in Iran and does not expect to inherit any property there.

Since 1979 Iran and the U.S. have been adversaries. Impediments to improved relations include Iran's efforts to acquire nuclear weapons and other weapons of mass destruction, its support for and involvement in international terrorism, its

support for violent opposition to the Middle East peace process and its dismal human rights record.

Applicant's first issue does not demonstrate that the Administrative Judge erred. Neither the Judge nor the Appeal Board has the authority to alter the terms of the applicable Adjudicative Guidelines. The Judge is required to apply the appropriate guidelines in the context of a whole person analysis. *See* Directive ¶E2.2.3.

Applicant's second issue also does not demonstrate error by the Administrative Judge. In this case the Judge discussed at length the record evidence that ran contrary to his ultimate decision. He concluded that Applicant was unable to establish that his relatives were not in a vulnerable situation. Applicant's ability to disagree with the Judge's weighing of the evidence does not demonstrate that his weighing was arbitrary, capricious, or contrary to law. *See* ISCR Case No. 03-24428 at 3 (App. Bd. May 3, 2006). Applicant's arguments, insofar as they relate to the Administrative Judge's whole person analysis, have some merit. In his decision, the Judge only analyzed the evidence in the context of whether Applicant's foreign family were in a position that made them vulnerable to coercion or exploitation as set forth in Mitigating Condition 1. Decision at 4. The Judge did not analyze the evidence in the context of whether there was a realistic potential for exploitation of the Applicant himself, a relevant whole person factor as set forth in Directive ¶E2.2.1.8. An Administrative Judge must consider and apply pertinent provisions of the Adjudicative Guidelines and the Board has previously noted that: "[a]lthough the position of an applicant's foreign members is significant and may preclude the favorable application of Foreign Influence Mitigating Condition 1, the totality of an applicant's conduct and circumstance (including the realistic potential for exploitation<sup>(2)</sup>) may still warrant a favorable application of the relevant general factors." *See* ISCR Case No. 03-17620 at 4 (App. Bd. April 17, 2006). However, given the record in this case, the Judge's ultimate adverse clearance decision is sustainable.

### 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: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. Directive ¶E2.A2.1.3.1. "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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.