DATE: July 10, 2006

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 04-04112

PPEAL 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 15, 2005, DOHA issued a statement of reasons (SOR) 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 December 22, 2005, after the hearing, Administrative Judge Charles D. Ablard denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant claims on appeal that: (a) the Administrative Judge made errors in several of his findings of fact; (b) the Judge's mentioning of Applicant's religion and making it an issue in the case violated his First Amendment rights; (c) the Judge erroneously adjudicated Applicant's financial interests in Egypt after informing Applicant that his financial affairs were not part of the case and were not covered in the SOR; (d) the Judge's failure to apply Guideline B Mitigating Conditions in Applicant's favor was error; and (e) the Judge erred by concluding that certain facts in the case had security significance. For the reasons that follow, the Board concludes that Applicant has not established harmful error.

Whether the Record Supports the Administrative Judge's Factual Findings

A. Administrative Judge's pertinent findings of fact:

Applicant is a 56-year-old employee of a defense contractor and has worked for the employer for 18 years. He served twenty years in the Marine Corps with the rank of sergeant. He held a security clearance during his military service, but has not held one since 1990. His work requires extensive travel abroad for long periods of time. In 1999, while working in Egypt for his employer over an eight-month period, he met an Egyptian woman working in the hotel where he lived. After a one-year engagement, they were married in 2000. He traveled to Egypt approximately twenty times between 1999 and 2002. He advised his company of the marriage, but did not advise them when he became engaged to a foreign national.

Since their marriage, his wife lives primarily in the U.S. and holds a multiple entry visa for the U.S. She intends to become a U.S. citizen. At the time of their marriage, Applicant believed that custom required that he rent her an

apartment in Egypt and furnish it with new furniture so that she could live there when in Egypt. He did so, and she resides there several months a year, especially when his work takes him abroad and she is unable to travel with him. He pays the equivalent of $85 per month for the apartment. Applicant and his wife own a home in the U.S.

Applicant's wife has several relatives in Egypt, including her parents and three siblings. None are employed by the Egyptian government. Applicant has very little contact with them, although his wife has telephone contact weekly. He has two bank accounts in Egypt, one in dollars and one in British pounds. The total for both is slightly less than $2,000, but at one point the total exceeded $20,000.

Applicant became a Muslim and took an Arabic name some time before marrying his wife, but did not advise his family members of this fact for several years. He believed that his wife could not marry a non-Muslim; however, he did not convert in order to marry her. Witnesses who testified for him were unaware of the new name and his conversion. His children were unaware of these facts for several years. His wife has little contact with his children.

In 2002, Applicant was assigned by he company to work in Romania for an extended period. His wife accompanied him. The Egyptian military attache in Romania became a friend of both Applicant and his wife. The attache spent an entire day trying to find an apartment in Romania for Applicant, taking him about the city in his car.

Applicant is well regarded by his fellow employees who also know his wife and do not regard him as in any way untrustworthy. His wife has a good reputation among those who know her.

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 Judge's credibility determinations. Directive ¶ E3.1.32.1.

Applicant alleges that the Judge made several factual errors in the decision regarding: (i) the length of his current employment; (ii) the time span of his possession of a security clearance; (iii) his employer's awareness of his engagement and marriage to a foreign national; (iv) his name change and his family's awareness of his marriage to a foreign national; and (v) his interaction with the Egyptian military attache in Romania. Applicant is correct that there are factual errors in the decision, notably items (i) and (ii) mentioned in the previous sentence.[(1)] These errors are harmless, however, in that they involve details that were not material to the Judge's ultimate decision, and there is no evidence that the Judge drew a negative or derogatory inference from the misstated facts. Department Counsel is correct in asserting that, regarding items (iii) through (v), Applicant's complaint on appeal stems from his objections to the conclusions drawn from the findings of fact rather than the findings themselves.

Applicant objects to the Administrative Judge's finding of fact concerning his religion on First Amendment grounds, rather than challenging the basic accuracy of the finding. Applicant states that the subject of his religion (his conversion to Islam) should not have been made an issue in this case. The Judge's decision contains a finding of fact concerning Applicant's religious conversion, and the hearing transcript contains some dialog about the subject. However, it is apparent from a reading of the Judge's decision and the record evidence as a whole that the subject of Applicant's religious conversion was not a component of the Judge's ultimate decision in the case. Indeed, the conclusions section of the Judge's decision contains no reference to the subject of Applicant's religion. Applicant has not established error on this point.

On page 15 of the hearing transcript, Applicant was about to discuss "[m]y financial matters" when the Judge said to Applicant, "That's not really an issue, don't go over that. That's not alleged in the SOR. I'm just talking about your wife's situation and your contacts in Egypt, et cetera." The fact that Applicant had two bank accounts in Egypt was an allegation in the SOR. It is not clear from the record or Applicant's appeal brief what evidence Applicant was trying to

introduce at the time. It is equally unclear from the record where the Judge thought Applicant was going with his remarks about finances at the time he interjected and cut him off. If the Judge interpreted Applicant's comment as an introduction to a general discussion of his finances, and if that is in fact what Applicant was attempting to do, then the Judge was correct in asserting that the status of Applicant's finances generally were not a subject covered by the SOR. Conversely, if the Judge thought that Applicant was beginning an explanation about his finances as they related to his ties to Egypt, and if that is in fact what Applicant was attempting to do, the Judge's assertion about those matters not being included in the SOR was obviously error. Even if the Board assumes, however, that the Judge erred at the time he cut Applicant off and stated that the issue was not alleged in the SOR, the error is harmless. A review of the record as a whole reveals that Applicant had a reasonable opportunity to offer evidence on the subject of his finances as they related to his ties to Egypt. Subsequent to the aforesaid dialog with the Judge, evidence about Applicant's financial interests in Egypt was developed during the course of Applicant's testimony. Evidence about Applicant's financial interests in the United States also came out in Applicant's testimony. The Judge had no apparent problems with the relevance of this testimony as evidenced by the fact he did not cut off Applicant or Department Counsel during these discussions and, in fact, asked questions himself about Applicant's financial interests in Egypt. A review of the record evidence indicates that Applicant was not denied an opportunity to present evidence on the subject of his finances as they related to his ties to Egypt.[(2)] Thus, Applicant has not established harmful error.

Whether the Record Supports the Administrative Judge's Ultimate Conclusions

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.*

Applicant presents four arguments against the Administrative Judge's conclusions that involve the assertions that certain Guideline B Mitigating Conditions should have been applied in Applicant's favor and that the Judge's conclusion that certain facts in the case had security significance was erroneous. These arguments do not establish error. In essence, they indicate only that Applicant disagrees with the Judge's weighing of the record evidence. The fact that Applicant would weigh the evidence differently or can articulate an alternate version of the record is not indicative of error on the part of the Judge.

Order

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

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, 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. Applicant also makes reference to a misstatement by the Judge of Applicant's gender. Applicant asserts that this resulted from an obvious "cut and paste" which shows a disregard for the importance of the decision. There is a rebuttable presumption that federal officials and employees carry out their duties in good faith. *See*, *e.g.*, ISCR Case No. 00-0030 at 5 (App. Bd. Sep. 20, 2001). On appeal, Applicant fails to overcome that presumption or to establish that the Judge's mistake was something other than an honest typographical error.

2. Although an assertion that he was denied an opportunity to present evidence could be inferred from Applicant's brief, he never makes this claim of error explicitly.