

DATE: July 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12363

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 26, 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 November 30, 2005, after the hearing, Administrative Judge Katherine Moen Braeman granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

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 application of Guideline B Disqualifying Condition 3, ⁽¹⁾ Guideline B Mitigating Condition 1, ⁽²⁾ and the whole person factors. ⁽³⁾ Department Counsel's argument has mixed merit.

Given the record in this case, the Administrative Judge erred in not applying Disqualifying Condition 3 and in favorably applying Mitigating Condition 1. However, those errors are harmless under the unusual facts and circumstances of this case because the Judge found that Applicant's circumstances raised security concerns under Disqualifying Conditions 1 ⁽⁴⁾ and 6, ⁽⁵⁾ and the Judge did not rely heavily on Mitigating Condition 1 in reaching her ultimate security clearance decision. Absent the applicability of that Mitigating Condition 1, it is clear that the Judge would have reached the same result based upon the record as a whole. Therefore, 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 the record evidence and with a whole person analysis. *See, e.g.*, ISCR Case No. 03-04300 at p. 7 (App. Bd. Feb. 16, 2006).

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. Applicant has been a naturalized U.S. citizen since 1998. His immediate family members (wife, child, mother, sister and two brothers) are legally located in the U.S., as are all of his financial ties. Applicant is a member an ethnic group that suffered under the Taliban, and he and his family are

supportive of U.S. involvement in Afghanistan. Applicant has not sought to continue any ties to Afghanistan except to use his expertise as a translator to advance the interests of the U.S. Two Americans in Afghanistan provided evidence for Applicant including a credible U.S. government official who viewed Applicant as invaluable in the war on terrorism in Afghanistan, and noted that Applicant had participated in interrogations of the Anti-Coalition Militia (ACM) and gathered information from ACM detainees which developed a greater understanding of ACM activities to further support U.S. operations. Applicant was careful to follow all security guidelines while in Afghanistan. He did not tell his family where he was working in Afghanistan in order to comply with security regulations, and he did not attend his father's funeral in Afghanistan because his priority was maintaining his security clearance.

The Administrative Judge also found, based upon the government's evidence, that Afghanistan had made great strides towards building democracy and rebuilding the country, that it had embraced democracy and pluralism in the context of Afghan and Islamic traditions, and that it had reversed its long history of serious human rights abuses under the previous regime. There were no findings that the government of Afghanistan possesses an aggressive or hostile intelligence/security profile *vis-a-vis* the U.S., or is otherwise engaged in efforts to acquire classified or sensitive economic information from the U.S.

Accordingly, in this case, the Administrative Judge has articulated a detailed, 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 (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. "Relatives, cohabitants, or associates who are connected with any foreign government" (Directive ¶ E2.A2.1.2.3).
2. "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" (Directive ¶ E2.A2.1.3.1).
3. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

4. "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" (Directive ¶ E2.A2.1.2.1).

5. "Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government" (Directive ¶ E2.A2.1.2.6).