

KEYWORD: Guideline C; Guideline B

DIGEST: The Judge failed to address the nature of the Iranian regime. The Judge's conclusions also fail to address other aspects of Applicant's conduct and circumstances as well as discrepancies in the evidence. Favorable decision reversed.

CASENO: 05-02210.a1

DATE: 01/18/2008

DATE: January 18, 2008

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 6, 2005, DOHA issued a statement of reasons advising Applicant of the

basis for that decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested a hearing. On August 31, 2007, after the hearing, Administrative Judge Jacqueline T. Williams 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 raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law.<sup>1</sup>

### **Whether the Record Supports the Administrative Judge’s Factual Findings**

A. The Judge made the following relevant findings of fact:

Applicant was born in Iran and immigrated the United States at the age of 18 in 1978. He became a naturalized U.S. citizen in 1982. His wife is a dual citizen of the U.S. and Iran. Applicant’s two children are American citizens by birth.

Applicant applied for an Iranian passport, which was reissued in December 1998. Applicant used the Iranian passport to travel to Iran in at least 1997, 1998, and 2000 for family reasons. Applicant still possessed an Iranian passport when he was interviewed by an investigator on February 9, 2005. Eight days later, the Embassy of Pakistan confirmed that Applicant submitted his passport in order to renounce his Iranian citizenship. Applicant stated that he no longer considers himself an Iranian citizen. Applicant has no assets in Iran.

Applicant’s parents are dual citizens of the U.S. and Iran. His father is a retired physician, and his mother is a retired midwife. Applicant states that his parents never worked for the Iranian government. Applicant’s parents travel to Iran about every other year to visit family. Applicant has two siblings who were born in Iran, but now live in the United States. Applicant is unsure whether they are dual citizens. Applicant does not believe they have traveled back to Iran.

Applicant has two aunts, cousins, and an uncle who are citizens and residents of Iran.<sup>2</sup> Applicant speaks to his aunts once or twice a year and each cousin about twice a year. One aunt was a doctor, and one was a physical therapist. Applicant is not sure what work his cousins do, but states that neither the aunts nor the cousins have ever worked for the Iranian government.

The SOR alleges that Applicant bought his house from an individual who is under investigation by the U.S. government for links to terrorist organizations. The SOR also alleges that at least two of Applicant’s neighbors are under investigation for links to terrorist organizations and that their houses were searched as a result of the investigation. Applicant states that he had no knowledge of that information when he bought his house, learning of it only from the government’s allegations.

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<sup>1</sup>Department Counsel does not appeal the Judge’s findings and conclusions regarding Guideline C.

<sup>2</sup>Applicant denies the existence of an uncle. See Decision at 5, *citing* transcript at 33.

“The government of Iran is controlled by radical Islamic clerics. The State Department reports that the government of Iran has a poor record of protecting human rights. Iran has a history of poor relations with the U.S. because it attempts to acquire nuclear weapons and other weapons of mass destruction, supports international terrorism, and opposes the Middle East peace process.” Decision at 6.

## B. Discussion

Department Counsel has not challenged the judge’s findings. Therefore, they are not an issue on appeal. To the extent that the Judge’s findings are relevant to the assigned error, they will be addressed below.

### **Whether the Record Supports the Judge’s Ultimate Conclusions**

A 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 general standard is that a clearance may be granted only when ‘clearly consistent with the interest of national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Appeal Board may reverse the 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.

Department Counsel contends that the Judge erred in her application of Guideline B Disqualifying and Mitigating Conditions. In her decision, the Judge correctly found that all of Applicant’s immediate family reside in the U.S. According to the record, only two aunts and cousins currently reside in Iran. However, Department Counsel points out that Applicant’s parents, with whom he has a close relationship, travel to Iran regularly and have at least a bank account in Iran. Department Counsel cites multiple State Department documents in the record regarding the dangers to American citizens, particularly those of Iranian birth, who travel to Iran. Under these circumstances, Department Counsel argues that Applicant’s parents, even though they reside in the U.S., raise security concerns which the Judge did not consider.

The major issue is the nature of the Iranian regime itself. The Board has held that it is error for a Judge to fail to take into consideration a significant aspect of a case. *See, e.g.*, ISCR Case No. 02-00318 at 7-8 (App. Bd. Feb. 25, 2004). While there is generally no requirement that the Judge discuss every piece of record evidence, a Judge’s conclusions must be based on the record evidence as a whole. *Id.* Here, the record evidence includes a significant amount of material about the nature of the Iranian regime’s hostility toward the United States, its poor human rights record, and its sponsorship of international terrorism. The Judge briefly refers to that evidence in her findings of fact, but makes no mention of it in her conclusions. The Judge even states, with no explanation, that “Applicant, as a U.S. citizen, is unlikely to be put in a position where he would have to choose between loyalty to the U.S. and his limited family, in Iran.” Decision at 9. The Judge’s failure to

take the nature of the Iranian regime into account in reaching her conclusions renders those conclusions arbitrary and capricious.

Likewise, as Department counsel points out, the Judge's failure to discuss the nature of the Iranian regime while performing a whole-person analysis renders that analysis arbitrary and capricious. To the extent there is some evidence indicative of mitigation, the Judge does not explain why it outweighs the significant security concerns raised in the case, particularly the poor human rights record of the Iranian government. *See, e.g.*, ISCR Case No. 04-12435 at 4 (App. Bd. Apr. 9, 2007).

In addition to the Judge's failure to address the nature of the Iranian regime, there are several aspects of Applicant's conduct and circumstances as well as discrepancies in the evidence which the Judge's conclusions fail to address. To the extent these matters are addressed in the Judge's findings of fact, the Judge's conclusions fail to follow rationally from those findings. However, there is significant record evidence which is not addressed at all in the Judge's decision.

### **Order**

The Judge's favorable security clearance decision is REVERSED.

Signed: Michael Y. Ra'anan  
Michael Y. Ra'anan  
Administrative Judge  
Chairman, 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