

KEYWORD: Guideline B

DIGEST: Applicant failed to overcome security concerns arising from his close family members residing in Iran. Adverse decision affirmed.

CASENO: 07-06997.a1

DATE: 11/17/2008

DATE: November 17, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-06997
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 24, 2008, DOHA issued a statement of reasons (SOR) 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 August 26, 2008, after the hearing, Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge's findings of fact were supported by substantial record evidence and whether the Judge's adverse decision is arbitrary, capricious, or contrary to law¹ Finding no harmful error, we affirm.

The Judge made the following sustainable findings of fact: Applicant is a service systems engineer for a Defense contractor. He was born and raised in Iran, immigrating to the U.S. in the 1970s. He became a naturalized U.S. citizen in the mid 1990s. He obtained a U.S. passport but retained his Iranian passport, using it upon one occasion. He has since surrendered his Iranian passport to his employer. He has never worked for the Iranian government in any capacity.

Applicant's wife was born and raised in Iran. She too immigrated to the U.S. and became a naturalized citizen in the mid 1990s. Applicant's mother is a citizen and resident of Iran. Applicant talks with his mother by telephone every couple of months. Applicant's siblings are also citizens and residents of Iran. He maintains telephone contact with one of the siblings every six months and with the other three monthly. Most of Applicant's wife's family members are citizens and residents of Iran, including her parents.

Iran is a country that sponsors terrorism and practices human rights violations. It is engaged in an effort to obtain and/or develop weapons of mass destruction and it supports violent opposition to the Middle East process. Arbitrary arrest and detention are standard practices. The Iranian government treats U.S.-Iranian dual nationals as Iranian citizens. U.S. nationals who enter Iran only on a U.S. passport risk detention absent persuasive proof of their formal renunciation of Iranian citizenship. Applicant "could conceivably obtain an Iranian passport in the future [although] he has no intention of doing so. He has never made any attempt to renounce his Iranian citizenship." Decision at 3. Applicant has no plans to return to Iran. *Id.* at 4. He has selected a third country in which to meet with family members.

The Board has considered the Judge's findings in light of the record as a whole. The Judge's material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.") Applicant takes issue with certain of the Judge's statements. For example, the Judge found that "Iran's post-revolution has been marked by an eight-year war with *Iran* . . ." Decision at 5 (emphasis added). This statement appears to refer to Iran's war with Iraq, the challenged use of "Iran" merely constituting a typographical error. *See, e. g.,* Administrative Notice Document I, U.S. Department of State Background Note: Iran, at 7. Applicant also draws the Board's attention to two references in the Analysis section of the decision to Sudan. One describes "Applicant's assurances of reporting his travel plans to Sudan and his long absence from the country . . ." *Id.* at 11. The other concerns Applicant's "familial relationships in the Sudan." *Id.* at 12. These references are clearly erroneous, insofar as the security concerns in this case arise from Applicants' contacts with Iran. There is nothing in the record to connect him with Sudan. However, reading them in the context of the entire decision and the Judge's detailed findings of fact about Iran, these references, although erroneous, are without consequence. The decision as a whole does not support a conclusion that the Judge

¹The Judge's favorable decision under SOR ¶ 1(g) is not at issue in this appeal.

actually evaluated Applicant's case in light of the wrong country.² The Board concludes that these errors are harmless in that, had they not occurred, the Judge would still have decided the case in the same way. *See, e. g.*, ISCR Case No. 06-19544 at 4 (App. Bd. May 28, 2008); ISCR Case No. 0706332 at 3 (App. Bd. May 9, 2008).

Concerning the remaining issue, the Board has examined the Judge's decision in light of the record as a whole. The Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also 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 Judge's decision that "it is not clearly consistent with national interest to grant or continue Applicant's security clearance" is sustainable on this record. Decision at 12. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge's adverse 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

²*See* Directive ¶ E2.6: "Adjudication under [Guideline B] can and should consider the identity of the foreign country in which the foreign contact or financial interest is located . . ."