

KEYWORD: Guideline B; Guideline C; Guideline E

DIGEST: The Judge concluded that Applicant’s failure to acknowledge his possession of an active passport in three security clearance applications and in a subject interview raises serious questions about his judgment that Applicant has failed to overcome. Viewed in light of the record as a whole, the Decision articulates a satisfactory explanation for its ultimate holding. Adverse decision affirmed.

CASE NO: 10-04144.a1

DATE: 01/29/2013

DATE: January 29, 2013

In Re:	)	
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	)	
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 April 23, 2012, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference) and Guideline E (Personal Conduct) of Department of Defense

Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 8, 2012, after the hearing, Administrative Judge Mary E. Henry denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guidelines B and C are not at issue in this appeal. Consistent with the following, we affirm the Judge's decision.

The Judge found that Applicant was born in Iran, immigrating to the U.S. in the early 1970s. He attended college in the U.S. and served in the U.S. Army, retiring with the rank of Master Sergeant (E-8). After retiring he worked as a contractor, often in high-risk areas of the world.

Applicant has not traveled to Iran since immigrating to the U.S. After becoming a U.S. citizen, he obtained a U.S. passport. However, he renewed his Iranian passport twice in the 1980s. This passport expired in the late 1980s. He renewed it twice again in the 2000s, but it has expired. He had done so because of a desire to visit his uncle in Iran and his family's concern that it could be dangerous for Applicant if he traveled on a U.S. passport.

During a security clearance interview in 2011, Applicant stated that he had obtained his Iranian passport at the request of another Government agency. He also stated that he had used his Iranian passport for identification purposes while working on official business overseas. At the hearing, however, he denied making the statement and claimed that he had always left his Iranian passport at home when traveling abroad.

He has retained the expired Iranian passport for sentimental reasons and as a souvenir. The record contains three security clearance applications (SCA),<sup>1</sup> in which he stated that he had dual citizenship with the U.S. and Iran. However, in a subject interview in 2003, he denied having dual citizenship or possessing an Iranian passport. In each of the three SCAs included in the record, Applicant denied that he held an active Iranian passport.

In the Analysis, the Judge stated that Applicant was aware that he had been in possession of an active passport. That he has not used this passport does not excuse Applicant's failure to mention it in his SCAs. She stated that Applicant has not provided a reason for his failure to acknowledge this passport. In the whole-person analysis, the Judge stated that Applicant's failure to acknowledge this passport in three SCAs and in a subject interview in 2003 raises serious questions about his judgment that Applicant has failed to overcome. Accordingly, she denied Applicant a clearance.

In his appeal brief, Applicant contends that he did not intentionally fail to advise of his Iranian passport. He states that the word "active" means a passport that had been used. Because he had not used this passport, he believed that it was not active. He argues that "active" and "valid"

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<sup>1</sup>These SCAs were completed in 2001, 2002, and 2008 respectively. Government Exhibits (GE) 1, 2, and 3.

do not have the same meaning and that he did not understand the question at issue in each of the three SCAs.<sup>2</sup>

As the Judge acknowledged, in evaluating an applicant's state of mind, one must consider the false statement or omission in light of the record as a whole. *See, e.g.,* ISCR Case No. 07-00196 at 2 (App. Bd. Feb. 20, 2009). In the case currently before us, the Judge considered Applicant's knowledge that he held the passport. Moreover, her finding that he had obtained it for purposes of travel to Iran or for official travel militates against an innocent mistake by Applicant. Her findings about Applicant's inconsistent statements concerning whether he had used the passport for official purposes also support her adverse conclusion.<sup>3</sup> Viewed in light of the record as a whole, the Decision articulates a satisfactory explanation for its ultimate holding. The Decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

### Order

The Judge's decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody

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<sup>2</sup>Compare, however, with Applicant's interview summary contained in GE 7, Answers to Interrogatories, in which he stated that he "holds a current, valid passport issued by Iran." Applicant acknowledged that this interview summary, along with two previous ones, was accurate. GE 8, Answers to Interrogatories.

<sup>3</sup>Applicant's argument on appeal that he had failed to mention his passport because the question at issue was ambiguous reiterates his reply to the SOR on this matter. This argument is not consistent with his statement, contained in his 2009 interview summary, that he had omitted his Iranian passport "due to an oversight." GE 7.

Administrative Judge  
Member, Appeal Board