

KEYWORD: Guideline B; Guideline C

DIGEST: A clearance decision under the Directive is a determination in the interests of national security and is in no sense a determination as to Applicant's loyalty. Adverse decision affirmed.

CASENO: 12-08412.a1

DATE: 09/11/2015

DATE: September 11, 2015

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In Re: )  
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 ----- ) ISCR Case No. 12-08412  
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 Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 7, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive).

Applicant requested a decision on the written record. On August 4, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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 adverse decision was arbitrary, capricious, or contrary to law. The Judges' favorable findings under Guideline C are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

Applicant was born in Iran and attended college in another middle eastern country. He came to the U.S. in the early 1970s and began working for a DoD contractor in the early 1980s. Applicant's spouse is a dual citizen of the U.S. and Iran, residing with Applicant in the U.S. Applicant has two siblings-in-law who are citizens and residents of Iran and one of whom is retired from a position with the government of Iran. Applicant communicates with his in-laws about four times a year.

Iran is one of the most "menacing foreign intelligence threats" to the U.S. Decision at 4. Iran has developed cyber espionage or attack capabilities that could be used against this country. Iran continues to act abroad in ways that run counter to U.S. interests and that worsen regional conflicts. The U.S. State Department has designated Iran as a State Sponsor of Terrorism. Iran has a poor human rights record.

### **The Judge's Analysis**

The Judge cited to evidence that Applicant shares living quarters with his spouse, who is a dual citizen of Iran. He concluded that she is presumptively close enough to her Iranian siblings to raise a security concern, stating, *inter alia*, that the couple's relationship with these relatives creates a possible conflict of interest. He also noted the extent to which Applicant communicates with his foreign relatives. The Judge concluded that Applicant had not met his burden of persuasion as to mitigation.

### **Discussion**

Applicant cites to some record evidence, in particular his answers to the SOR, that he believes may have been poorly worded and that did not present a clear picture of his circumstances. His brief addresses his foreign relatives and travels in a manner that, he contends, will provide an accurate context for evaluating his connections in Iran. He emphasizes his loyalty to the U.S.

We have considered the entirety of Applicant's argument in light of the record as a whole. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he shown that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 12-08417 at 2 (App. Bd. Jun. 24, 2015). To the extent that Applicant is challenging the sufficiency

of the Judge’s findings of fact, we conclude that they are based on substantial evidence or constitute reasonable inferences that could be drawn therefrom. *See, e.g.*, ISCR Case No. 11-00970 at 2 (App. Bd. Feb. 28, 2012). A clearance decision under the Directive is a determination in the interests of national security and is in no sense a determination as to Applicant’s loyalty. Directive, Enclosure 1 SECTION 7.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. *See, e.g.*, ISCR Case No. 12-00084 at 3 (App. Bd. Bd. May 22, 2014). In Foreign Influence cases, the nature of the foreign government involved, the intelligence gathering history of that government, and the presence of terrorist activity are important considerations. *See, e.g.*, ISCR Case 05-03250 at 4-5 (App. Bd. Apr. 6, 2007). There is a rational connection between an applicant’s family ties in a hostile country and the risk that the applicant may fail to protect classified information. *See, e.g.*, ISCR case No. 10-07436 at 3, n. 4 (App. Bd. Oct. 19, 2011). “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 Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board