

KEYWORD: Guideline B

DIGEST: The Judge concluded that Applicant’s immediate family members’ travels to Iran, their regular contacts with their relatives in Iran, the potential for his immediate family members to travel to Iran in the future, and the nature of the Iranian government and its relationship with the U.S. all create unmitigated security concerns. The record supports the Judge’s conclusions. Adverse decision affirmed.

CASENO: 12-09322.a1

DATE: 04/23/2013

DATE: April 23, 2013

	)	
In Re:	)	
	)	
-----	)	ISCR Case No. 12-09322
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Eric Roper, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 20, 2012, DoD 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). Department Counsel requested a hearing.

On January 25, 2013, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Henry Lazzaro denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge erred in concluding that no Guideline B mitigating conditions applied. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge found: Applicant is 55 years old. He was born in Iran to Muslim parents. Applicant resided in Europe from 1999 until he was permitted to immigrate to the United States in 2004. Applicant became a naturalized U.S. citizen in 2010. Applicant has been married since 1987. His wife is an Iranian citizen. Applicant and his wife have two children. Both are naturalized U.S. citizens.

Applicant's parents are both deceased. He has a brother and a sister who are both citizens and residents of Iran. Both siblings are married to Iranian nationals. Applicant's mother-in-law is a citizen and resident of Iran. Applicant's wife has a sister and brother who are citizens and residents of Iran. Applicant and his wife have nephews and nieces who are citizens and residents of Iran.

Since leaving Iran in 1999, the only time Applicant has visited there was in 2009 when his mother became ill. Applicant's wife has visited Iran at least three times since she immigrated to the United States. She last visited Iran in 2012. Applicant's daughter has also visited Iran three times since she immigrated to the United States.

Her last visit occurred in 2011. Applicant's son has also visited Iran on at least one occasion, in either 2009 or 2010. Applicant has expressed his concern to his wife and children about their visits to Iran. However, his wife insists on returning because she has family there, and none in the U.S. Also, her mother is elderly.

Applicant's wife has either weekly or bi-weekly telephone contact with her relatives in Iran. Applicant's daughter is close to a cousin in Iran and speaks with her by telephone about every other week. His daughter speaks with other relatives in Iran about once a month. Applicant's wife and children maintain their Iranian passports.

Applicant has proven himself to be trustworthy, honest, sincere, and a man of his word. He has high moral standards and is dedicated to supporting the United States. He has absolutely no loyalty to Iran, but is instead totally committed to the United States.

Iran is one of the most active state sponsors of terrorism. Iran has a poor human rights record and is reported to have carried out many executions. It has detained U.S. citizens who have traveled to Iran, including on false accusations of espionage.

The Judge concluded: Despite Applicant's expressed concerns for their well-being, his wife and daughter have traveled to Iran while he was serving with U.S. forces in another country. The danger to his wife and daughter during those travels would be great if Iranian officials were to become aware of Applicant's service to U.S. military forces. Applicant has little contact with

anyone in Iran; however, his wife and daughter have frequent contact with their Iranian relatives. There is no reason to doubt that Applicant is a loyal American citizen or suspect he would ever consider doing harm to the interests of the United States. Still, his immediate family members' travels to Iran, their regular contacts with their relatives in Iran, the potential for his immediate family members to travel to Iran in the future, and the nature of the Iranian government and its relationship with the U.S. create a security concern that has not been overcome.

Applicant argues that it was error for the Judge not to find that one or more mitigating conditions applied to his particular circumstances. Specifically, Applicant asserts that Adjudicative Guidelines ¶¶ 8(a)<sup>1</sup> and 8(b)<sup>2</sup> apply in his case since he stated in his SOR response and on the record at the hearing that he would resolve any conflict in favor of U.S. interests. Applicant also argues that all his family ties and assets are in the United States. Applicant states that his involvement in the community and his work performance are further evidence of his deep and longstanding relationship and loyalty to the U.S. Applicant also asserts that the location of an individual's foreign contacts in a higher-risk country is not by itself a disqualifying condition.

Given the Judge's findings about (1) the extent of Applicant's family connections in Iran, either directly or through his wife, and (2) the nature of the Iranian regime, the Board finds no error in the Judge's treatment of the mitigating conditions. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. See, e.g., ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence. The Judge's decision is not based merely on the fact that Iran is a higher-risk country. While noting the nature of the Iranian government, the Judge also considered the unique aspects of Applicant's case. Applicant's arguments do not undercut the Judge's findings and conclusions regarding Applicant's numerous family ties to Iran, the strength of those ties, and the instances of family members traveling to Iran.

In support of his appeal, Applicant points to a decision by the Hearing Office, which he argues supports his request for a favorable determination. The Board gives due consideration to this case. However, each case "must be decided upon its own merits." Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. See ISCR Case No. 06-24121 at 2 (App. Bd. Feb 5, 2008).

---

<sup>1</sup>"[T]he nature of the relationships with foreign persons, the country in which these persons are located, or the positions and activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S."

<sup>2</sup>"[T]here is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest[.]"

The record supports a conclusion that the Judge examined the relevant data and articulated 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 interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.

### **Order**

The decision of the Judge 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: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board