

KEYWORD: Guideline B

DIGEST: The Chief Administrative Judge mistakenly discusses statutory language which is inapposite to the matter of granting a security clearance. The Judge also confuses the question of whether Applicant may be confronted with a choice with how Applicant might deal with such a choice. The Board does not hold an Administrative Judge to a standard of perfection. There are numerous unchallenged findings of fact which cumulatively support the Judge's ultimate conclusion. Favorable decision affirmed.

CASENO: 02-17369.a2

DATE: 04/05/2007

DATE: April 5, 2007

In Re:)	
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)	
-----)	ISCR Case No. 02-17369
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 7, 2004, DOHA issued a statement of reasons 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 October 27, 2005, after the hearing, Chief Administrative Judge Robert Robinson Gales granted Applicant’s request for a security clearance. Department Counsel appealed. The Appeal Board remanded the case to the Chief Administrative Judge in a decision dated May 23, 2006. The Chief Administrative Judge issued a second favorable decision on May 25, 2006. Department Counsel timely appealed the decision after remand pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Chief Administrative Judge’s favorable decision is arbitrary, capricious, or contrary to law because of the Chief Administrative Judge’s multiple misapplications of Guideline B Foreign Influence Mitigating Condition 1 (MC 1); and whether the Chief Administrative Judge’s whole-person analysis is arbitrary, capricious, or contrary to law.

Department Counsel’s arguments have merit with respect to the Chief Administrative Judge’s misapplications of MC1. Applicant’s brother appears to fit technically into the category “agent of a foreign power.” The Chief Administrative Judge mistakenly discusses statutory language from other legal settings which are inapposite to the matter of granting a security clearance. *See* ISCR Case No. 04-00540 at 4-6 (App. Bd. Jan. 5, 2007). Furthermore, the language of the statutes cited is explicitly self-limiting. Also, the Chief Administrative Judge’s analysis confuses the question (explicitly raised in MC1) of whether Applicant will have to make a choice between his Jordanian relatives and the United States with the question (not raised in MC1) of how Applicant might deal with such a choice if he were confronted with it.¹

Nevertheless, the Appeal Board does not hold an Administrative Judge’s decisions to a standard of perfection. *See* ISCR Case 05-03143 at 2 (App. Bd. Dec. 20, 2007). In this case, there are numerous unchallenged findings of fact which cumulatively support the ultimate conclusion of the Chief Administrative Judge’s whole-person analysis that Applicant has sufficiently strong ties to the United States to overcome the government’s security concerns. Those facts include: Applicant immigrated to the United States in 1982; Applicant has been a United States citizen since 1986; Applicant’s wife and children are US citizens; Applicant has had a security clearance since 1991; and Applicant has not used a Jordanian passport since his arrival in the United States. Considering the record as a whole, the Chief Administrative Judge’s ultimate favorable security clearance decision is sustainable.

¹The Chief Administrative Judge cites to a decision of a fellow Administrative Judge in ISCR Case 03-21434 (A.J. May 24, 2006). That case was remanded by the Appeal Board because of error on the part of the Judge. *See* ISCR Case No. 03-21434 (App. Bd. Feb 20, 2007).

Order

The decision of the Chief Administrative Judge granting Applicant a clearance 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board