

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 hearing. On June 27, 2006, after the hearing, Administrative Judge Christopher Graham granted Applicant’s request for a security clearance. Department Counsel submitted a timely appeal, and Applicant cross-appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge resolved concerns under Guideline B about Applicant’s ties of affection to his relatives in Israel by a “whole person” analysis that was arbitrary, capricious, and contrary to law.¹ Department Counsel argued that the Judge’s whole person analysis was conclusory in nature and not based upon substantial record evidence.

In his whole person analysis, the Judge relied on numerous unchallenged findings of fact which cumulatively support his ultimate conclusion that Applicant has sufficiently strong ties to the U.S. to overcome the government’s security concerns. These facts include the following: Applicant is a U.S. citizen with “almost thirty-five years of successful employment in this country;” Applicant was educated in the U.S.; his children are U.S. citizens; and Applicant has no financial ties to Israel. The Judge also found that Israel’s status as a U.S. ally renders it less likely that Israel would exploit Applicant’s relatives. In addition, the Judge stated that Applicant’s demeanor buttressed the credibility of his testimony that he has attachments in the U.S. and will protect U.S. secrets. *See* Directive ¶ E3.1.32.1 (“[T]he Appeal Board shall give deference to the credibility determinations of the Administrative Judge.”); ISCR Case No. 02-03186 (App. Bd. Feb. 15, 2006). Given the record before him, the Judge has articulated a rational explanation for his favorable decision. An issue on appeal concerns Applicant’s brother, a retired Israeli military officer. In a similar situation, the Board noted there was no basis to conclude that an applicant’s brother (who was a retired officer in the Air Force of Taiwan) is currently an agent of the government. *See* ISCR 03-17071 at 4 (App. Bd. Nov. 22, 2006). An appealing party’s disagreement with a Judge’s decision is not a sufficient basis to establish that he erred.² *See, e.g.*, ISCR Case No. 01-05912 (App. Bd. Aug. 29, 2001). The Board concludes that the Judge’s favorable security clearance decision is not arbitrary, capricious, or contrary to law, given the totality of facts and circumstances in this case. *See* Directive ¶ E3.1.32.3. Because of this holding, issues raised by Applicant on cross-appeal are moot.

¹The Government’s assignment of errors and brief refer only to Guideline B. The Judge’s favorable decision as to Guideline C security concerns, therefore, is not at issue.

²The Judge’s analysis of possible mitigating conditions under Guideline B contains problematic statements of law, including Board precedent, such as: “[T]he Appeal Board prohibits any consideration of evidence that is not dispositive of the issue.” The Judge cited no authority for this statement. We note that this Board places no such limitation on the admission or consideration of evidence, the Directive requiring that “[e]ach clearance decision must be a . . . common sense determination based on consideration of all relevant and material information.” ¶ 6.3. *Compare* ISCR Case No. 04-11571 at 2-3 (App. Bd. Feb. 8, 2007).

Order

The decision of the Administrative Judge granting Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, 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