

KEYWORD: Guideline C; Guideline B

DIGEST: The Judge failed to place adequate weight on the nature of the Iranian government. The Judge ignored his own findings of fact regarding Applicant's conduct and circumstances. Favorable decision reversed.

CASENO: 05-03279.a1

DATE: 09/20/2007

DATE: September 20, 2007

In Re:)	
)	
-----)	ISCR Case No. 05-03279
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Jerome H. Gress, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security

clearance. On July 28, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended (Directive). Applicant requested a hearing. On February 27, 2007, after the hearing, Administrative Judge John Grattan Metz, Jr., granted Applicant’s request for a security clearance. Department Counsel timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raises the following issues on appeal¹: whether the Judge erred in failing to apply Foreign Influence Disqualifying Conditions (FIDC) 1² and 6³; and whether the Judge erred in concluding that Applicant had mitigated the government’s security concerns.

Whether the Record Supports the Administrative Judge’s Factual Findings

A. The Judge made the following relevant findings of fact: **REDACTED**

Applicant was born in Iran 4 Applicant
spent his childhood in Iran, but came to the United States
Applicant returned to Iran He held a position
He entered private

5

Applicant , but retained his Iranian passport

6

¹Department Counsel does not appeal the Judge’s findings and conclusions under Guideline C (Foreign Preference). That portion of the Judge’s decision is not at issue here.

²“An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country,” Directive ¶ E2.A2.1.2.1.

³“Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government,” Directive ¶ E2.A2.1.2.6.

⁴Applicant was born **REDACTED** Iran became a theocratic republic guided by Islamic principles. The United States broke off diplomatic relations with Iran following the invasion of the U.S. Embassy in Tehran and the seizure Embassy employees.

⁵Applicant **REDACTED** Iran.

⁶ Applicant’s **REDACTED**

Applicant and his wife are dual citizens of Iran and the United States. Applicant says they are willing to renounce their Iranian citizenship, but have not done so because

Iran is a fundamentalist Islamic republic with a poor human rights record and confrontational relations with the United States. Relations are unlikely to improve, given Iran's efforts to obtain nuclear weapons, its sponsorship of, support for, and involvement in, international terrorism, and its support for violent opposition to the Middle East peace process.

B. Discussion

The appeal involves the Judge's conclusions.

Whether the Record Supports the Administrative Judge's Ultimate Conclusions

A Judge is required to "examine the relevant data and articulate 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 Appeal Board may reverse the Judge's decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. "The general standard is that a clearance may be granted only when 'clearly consistent with the interest of national security.'" *Dep't of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Department Counsel contends that the Administrative Judge erred in failing to apply FIDC 1 with regard to certain of Applicant's relatives and FIDC 6 with regard to property seized from Applicant. Department Counsel's argument has merit.

The Judge states that the presence of Applicant's relatives in Iran is not a security concern because they are not part of Applicant's immediate family. Decision at 5. FIDC 1 does not require that the relatives be in Applicant's immediate family, as long as they are persons to whom Applicant has close ties of affection or obligation. In this case, Applicant has maintained contact with them since he left Iran over 25 years ago. He does not call them in Iran for fear of retribution against them, but they call him whenever they leave Iran and contact him when they visit the United States. Characterizing Applicant's relationship to his relatives as casual and infrequent, the Judge cited Foreign Influence Mitigating Condition 3.⁷ Decision at 5. While the record evidence indicates that the contacts are infrequent, the totality of the circumstances of Applicant's contacts with his relatives cannot be said to be casual. *See, e.g.*, ISCR Case No. 01-24358 at 15-16 (App. Bd. Apr. 13, 2004). In this instance, the Judge erred by not applying FIDC 1, and by favorably applying FIMC 3.

⁷"Contact and correspondence with foreign citizens are casual and infrequent" Directive ¶ E3.A2.1.3.3.

REDACTED

In that regard, the Judge referred to FIMC 5⁸, but did not actually apply it. Decision at 6. As Department Counsel points out, the issue is not whether Applicant ; the issue is whether Applicant's conduct and circumstances have placed him in a position where he may be vulnerable to foreign influence or coercion. Department Counsel therefore argues that FIDC 6 is applicable. That argument has merit.

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That conduct puts Applicant in a position of vulnerability to be influenced by the Iranian government by either coercive or non-coercive means. This is true whether or not the government has attempted in the past to exploit that vulnerability. *See, e.g.*, ISCR Case No.00-0628 at 5 (App. Bd. Feb. 24, 2003).

In concluding that Applicant's Iran were not of security significance, the Judge failed to place adequate weight on the nature of the Iranian government. Although the Adjudicative Guidelines pertaining to Guideline B are ostensibly neutral as to the character of the country involved, they should not be construed to ignore the political/security profile of the country *vis-a-vis* the United States. *See, e.g.*, ISCR. Case No. 00-0317 at 3 (App. Bd. Mar. 29, 2002). In this case, the Judge found that Iran is hostile to the United States and has been identified as a state sponsor of terrorism. He also found that Iran is making efforts to obtain weapons of mass destruction and has a poor record on human rights. Yet the Judge's conclusion regarding the security significance of Applicant's ignores his own findings with regard to the nature of the Iranian regime and the significance of its prior treatment of Applicant and his family and the fear of surveillance on the part of his family. Such factors are ". . . important evidence that provides context for all the other evidence of record and must be brought to bear on the Judge's ultimate conclusions in the case." *See* ISCR Case No. 04-02511 at 5 (Mar. 20, 2007), *quoting* ISCR Case No. 04-07766 at 3 (App. Bd. Sep. 26, 2006).

The record in this case indicates that some of Applicant's relatives are afraid to speak to Applicant by phone within Iran because they believe that their telephone lines are tapped and that they will be mistreated if their relationship with Applicant is documented. Other relatives of Applicant within Iran have denied any knowledge of him because they fear government retribution. Transcript at 49. The Iranian government is aware

Applicant

Iran.

The Judge's analysis of the security significance of Applicant's situation is unsustainable because it fails to consider an important aspect of the case, fails to articulate a satisfactory explanation for its conclusions, and offers an explanation for the decision that runs contrary to the

⁸"Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities" Directive ¶ E2.A2.1.3.5.

record evidence. *See, e.g.*, ISCR Case No. 04-02511 at 6 (App. Bd. Mar. 20, 2007); *see also Motor Vehicles Mfrs. Ass'n*, 463 U.S. at 43.

Order

The Judge's favorable security clearance is REVERSED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

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