

KEYWORD: Guideline C; Guideline B

DIGEST: The Judge found that Applicant has two brothers and a sister in Iran. Applicant has a property interest in Iran. Until the hearing, Applicant was unwilling to surrender his Iranian passport, although he did destroy it in the course of the hearing.. Adverse decision affirmed

CASENO: 06-23479.a1

DATE: 11/28/2007

DATE: November 28, 2007

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In Re:)	
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)	ISCR Case No. 06-23479
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Leif H. Hendrickson, Personal Representative

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 22, 2006, DOHA issued a statement of reasons (SOR) 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 July 23, 2007, after the hearing, Administrative Judge Christopher Graham denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s findings of fact are supported by substantial evidence; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following sustainable findings of fact: Applicant came to the United States in 1973 at the age of 19.¹ He attended college in the U.S. He owns real property in this country as well as bank accounts and a 401(k) account. He has two brothers and a sister who are citizens and residents of Iran. His older brother is a business man, and his other brother suffers from Down’s syndrome. Applicant’s sister is a homemaker who has two children, one of whom lives in the U.S. He speaks to his sister about once a month and to his brother twice a month.

Applicant owns an interest in an Iranian condominium worth about \$200,000. He has held an Iranian passport which, at the time of the SOR, he was unwilling to surrender, although he destroyed it during the course of the hearing.

Iran is an authoritarian regime that violates human rights and is an active supporter of terrorism. It is increasingly involved in supplying militant groups opposed to the U.S. in Iraq. It is capable of producing biological and chemical weapons.

In light of these findings, the Judge’s conclusion that Applicant had failed to meet his burden of persuasion as to the application of pertinent mitigating conditions is sustainable. *See* Directive ¶¶ E2.8(a), (c). *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of national security’”); Directive ¶ E3.1.15. (“The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security clearance decision.”) Therefore, we conclude that the Judge’s decision is neither arbitrary, capricious, nor contrary to law. *See* Directive ¶¶ E3.1.32.3 and E3.1.33.3.

¹Applicant was naturalized a U.S. citizen in 1996. Government Exhibit 1.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin
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