

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-12407

DECISION OF ADMINISTRATIVE JUDGE

MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-one-year-old Applicant is an Iran-born, naturalized United States citizen. Although he has more substantial connections to the United States than to Iran, his parents and two sisters are citizens of and live in Iran and he has frequent telephone contact with them. He retains an Iranian passport for convenience. Because of Iran's poor human rights record and hostility towards the United States government, he must overcome a heavy burden to mitigate security concerns. He failed to meet this heavy burden. Security concerns pertaining to his foreign influence and foreign preference are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 22, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). ⁽¹⁾ On May 25, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. ⁽²⁾ The SOR alleges security concerns under Guidelines B (Foreign Influence), and C (Foreign Preference). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer notarized on July 24, 2006, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. ⁽³⁾ A complete copy of the file of relevant material (FORM), dated August 10, 2006, was provided to him on August 28, 2006, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. ⁽⁴⁾ Any such submissions were due by September 27, 2006, but he did not submit any additional information. ⁽⁵⁾ The case was assigned to me on October 12, 2006.

PROCEDURAL RULING

On August 10, 2006, Department Counsel made a motion (FORM at 5) seeking judicial notice of the Memorandum of Assistant Secretary of Defense Arthur L. Money, dated August 16, 2000 (Money Memo) (Item 7); U.S. Department of State Iran Country Report on Human Rights Practices, released March 8, 2006 (Item 8); U.S. Department of State Iran Consular Information Sheet, dated August 10, 2006 (Item 9); and U.S. Department of State Iran Travel Warning, dated August 10, 2006 (Item 10). Department Counsel's motion for judicial notice is denied. Administrative or official notice, rather than judicial notice, is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. *See* Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Applicant has not objected to my consideration of Items 7-10, and I will take administrative notice of Items 7-10.

FINDINGS OF FACT

As to the factual allegations, Applicant admitted the facts alleged in the SOR ¶¶ 1.b to 1.e, and 2.a and 2.b.⁽⁶⁾ For SOR ¶ 1.a, he did not indicate whether or not his mother and father are citizens and residents of Iran, but he did explain that they received a "green card" in September 2005, and plan to become citizens of the United States. For each SOR allegation he cited possible extenuating circumstances that could reduce security concerns, emphasizing the connections of his family to the United States. His admissions are incorporated herein as findings of fact.

Applicant is 51-years-old.⁽⁷⁾ He is employed as an engineer for a defense contractor.⁽⁸⁾ From 1981 to 1985, he attended a United States university, and was awarded a Bachelor of Science degree.⁽⁹⁾ He has no prior United States military service.⁽¹⁰⁾ He was married on April 3, 1997,⁽¹¹⁾ and became a United States citizen in 1999.⁽¹²⁾ He has lived in the United States for almost 26 years, obeys United States laws, pays taxes to the United States and is a good United States citizen.⁽¹³⁾ He is loyal to the United States and is proud to be an American.

Foreign Influence

Applicant's mother and father (SOR ¶ 1.a),⁽¹⁴⁾ two sisters (SOR ¶ 1.b), mother-in-law (SOR ¶ 1.d) and father-in-law (SOR ¶ 1.d) are citizens and residents of Iran. His brother is a citizen of Iran, but he had a green card and plans to become a United States citizen in a year or so (SOR ¶ 1.c). His mother-in-law and father-in-law have applied for a green card, and are in the process of becoming residents of the United States. His spouse is a citizen of the United States and Iran (SOR ¶ 1.e). His spouse retains her Iranian citizenship because she believes it will facilitate her parents' efforts to obtain a green card. His two sisters are married and have their own families in Iran.

Applicant has frequent contacts by telephone with his family members as follows: mother (15 times per year); father (15 times per year); brother (8 times per year); each of two sisters (8 times per year); mother-in-law (8 times per year), and father-in-law (8 times per year).⁽¹⁵⁾ None of his family members living in Iran are employed by the Iranian government. Applicant has not been contacted by, or received requests or threats from Iranian authorities.

Foreign Preference

Applicant has exercised dual citizenship with both Iran and the United States (SOR ¶ 2.a), and currently possesses an Iranian passport (SOR ¶ 2.b).⁽¹⁶⁾ From 1977 to 1979, he served in the Iranian military.⁽¹⁷⁾ He last visited Iran seven years ago when he brought his spouse to the United States. On February 15, 2006, he renewed his expired Iranian passport.⁽¹⁸⁾ He retains his Iranian passport for emergencies-in the event that his ailing parents need his assistance, and he is required to travel to Iran on short notice. He is unwilling to surrender his Iranian passport, and is unwilling to renounce his citizenship with Iran because of his potential need to travel to Iran on short notice.⁽¹⁹⁾

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Foreign Influence - Guideline B: "A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure." Directive ¶ E2.A2.1.1.

Foreign Preference - Guideline C: "When an individual acts in such a way as to indicate a preference for a foreign country over the United State, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." Directive ¶ E2.A3.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to these two adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."⁽²⁰⁾ The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁽²¹⁾

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated

upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Foreign Influence Under Guideline B, a potential for foreign influence raises questions regarding an applicant's willingness or ability to protect classified information and are relevant to security concerns "if they make an individual potentially vulnerable to coercion, exploitation, or pressure." Directive ¶ E2.A2.1.1.

One of eight possible foreign influence disqualifying condition (FI DC) could raise a security concern in this case. FI DC 1 applies where 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. "Immediate family members" include a spouse, father, mother, sons, daughters, brothers, and sisters. Directive ¶ E2.A2.1.3.1. Applicant's father, mother, and two sisters are citizens of and live in Iran, although his mother and father are in the process of moving to the United States. This situation creates the potential for foreign influence and could result in the compromise of classified information. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. ⁽²²⁾ However, such ties do raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ⁽²³⁾

The government produced substantial evidence to establish FI DC 1. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Security concerns based on foreign influence can be mitigated by showing that any of the five Foreign Influence Mitigating Conditions (FI MC) apply. FI MC 1 recognizes that security concerns are reduced when there is "[a] determination that the immediate family member(s), (spouse, father mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." Directive ¶ E2.A2.1.3.1. Notwithstanding the facially disjunctive language of FI MC 1, the Appeal Board has decided that Applicant must prove that his family members, cohabitant or associates are not agents of a foreign power, and are not in a position to be exploited by a foreign power in a way that could force Applicant to chose between the person(s) involved and the U.S. ⁽²⁴⁾

His father, mother, and two sisters are citizens of Iran, but they do not work for the government of Iran. The evidence does not establish that his family members living in Iran are agents of Iran or any other foreign power.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. The hostility of Iran to the United States places a heavy burden on Applicant to demonstrate that his

immediate family members in Iran do not pose security risk and he is not in a position to be forced to choose between loyalty to the United States and his family members. With its adversarial stance and its dismal human rights record, it is conceivable that Iran would target any citizen in an attempt to gather information from the United States.

Applicant's closest family member is his wife, who is a United States citizen and lives with him. Because his wife lives in the United States, she is not vulnerable to coercion or exploitation by a foreign power, except possibly indirectly through her parents, who still live in Iran.

There is no evidence that his elderly father and mother, his two sisters or his brothers-in-law are or have been, political activists or journalists, challenging the policies of the Iranian government. Likewise, there is no evidence that these relatives work for the Iranian government or military or any news media. There is no evidence that the Iranian government has approached any of his Iranian family for any reason, and in particular, has not approached them since his visits to Iran in 1998 and 1999. (25) There is no evidence that his family living in Iran engages in activities which would bring attention to themselves or that they are even aware of his work. As such, there is a reduced possibility that they would be targets for coercion or exploitation by the Iranian government, which regularly seeks to quiet those which speak out against it. Applicant deserves some credit because of the reduced possibility that Iran will exploit his family, but FI MC 1 cannot be applied in this case because even if there was substantial evidence of the "family members' low-key noncontroversial lifestyle, and the fact that the Iranian government has not contacted them about Applicant in the past, such factors are insufficient to support the application of FI MC 1" because of the nature of the Iranian government and its relationship to the United States. (26)

FI MC 3 can mitigate security concerns where "contact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. Applicant has about 50 contacts by telephone annually with his mother, father, brother and sisters living in Iran. (27) He did not indicate whether he provides financial support to them. FI MC 3 does not apply because his contacts with them are not casual and infrequent. *See* ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters in Iran a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings in Iran once every four or five months not casual and infrequent).

Finally, none of the individual family circumstances discussed above are determinative. Rather, these circumstances must be considered together under the "whole person concept," which includes consideration of the absence of evidence concerning: his family's governmental connections; their financial dependence on the government; and business connections susceptible to industrial espionage. On the other hand, the nature of Iran's government, its human rights record, and its relationship with the United States create "a very heavy burden of persuasion to overcome the security concerns raised by the fact that the Applicant has family members living in Iran." ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (making findings about Iran's relationship with the United States and the potential for foreign influence, reversing Administrative Judge and ordering denial of clearance).

Applicant's statement about his loyalty to the United States is credible, and there is no reason to believe that he would take any action which could cause potential harm to his United States family or to this country. If the Iranian government should threaten harm to his family members living in Iran to obtain classified information from him or otherwise contact him, I am persuaded that he would report this activity to the United States authorities. There is no evidence that he has failed to follow the rules or failed to require those around him to do the same on projects requiring security clearances. There is no evidence that he lacks the respect and trust of his employer, his friends, and family or that he lacks honesty and integrity. There is no evidence that he has revealed to his family in Iran the nature of his work or about applying for a security clearance. I cannot, however, find that Applicant has mitigated the government's security concerns as to Guideline B because the absence of evidence does not overcome the heavy burden the Appeal Board has established through case law concerning security clearances for applicant's from Iran.

Foreign Preference

Under Guideline C, "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." Directive ¶ E2.A3.1.1.

Three of nine foreign preference disqualifying conditions (FP DC) could potentially raise a security concern and may be disqualifying in this case. FP DC 1 applies where there has been an "exercise of dual citizenship." Directive ¶ E2.A3.1.2.1. FP DC 2 applies where there an applicant "possess[es] and/or use[s] a foreign passport." Directive ¶ E2.A3.1.2.2. FP DC 3 applies where an applicant has provided "[m]ilitary service or [shown] a willingness to bear arms for a foreign country." Directive ¶ E2.A3.1.2.3.

FC DCs 1-3 have some partial applicability because he used his Iranian passport in 1998 and 1999, and he served in the Iranian military in 1977 to 1979. FP DC 2 applies because Applicant has retained and renewed his Iranian passport. A factor weighing towards granting his clearance is that Applicant became a United States citizen in 1999, and he swore allegiance to the United States. oreover, his possession and use of an Iranian passport was for convenience to ease travel within Iran when visiting his family residing in Iran, not because he wanted to show allegiance or loyalty to Iran.

Three of four foreign preference mitigating conditions (FP MC) could potentially reduce security concerns in this case. FP MC 1 applies where "[d]ual citizenship is based solely on parents' citizenship or birth in a foreign country." Directive ¶ E2.A3.1.3.1. FP MC 2 applies where "[i]ndicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship." Directive ¶ E2.A3.1.3.2. FP MC 4 applies where an applicant "has expressed a willingness to renounce dual citizenship" Directive ¶ E2.A3.1.3.4.

FP MC 1 applies because Applicant's Iranian citizenship is based on his parents being Iranian citizens and his birth in Iran. FP MC 2 applies to Applicant's foreign military service, which occurred before he obtained United States citizenship. FP MC 4 does not apply because he specifically declined to renounce his Iranian citizenship. If his preference to the United States is compared to his preference to Iran, his links or associations with the United States are much stronger, as demonstrated by his oath of allegiance to the United States, his 26-year residence to the United States, and his spouse's United States citizenship.

The Money Memorandum mandates that, "consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." Applicant renewed his Iranian passport in 2006. It is valid, and can be used to travel any where in the world. Applicant has not mitigated the government's security concerns under Guideline C.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. The directive lists nine adjudicative process factors which are used for "whole person" analysis. Because foreign influence and foreign preference do not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., only the eighth adjudicative process factor is potentially relevant. "[T]he potential for pressure, coercion, exploitation, or duress" is relevant to "whole person" analysis that could affect the clearance decision. Directive ¶ E2.2.1.8. In this case, Iran's government is hostile to the United States and does not conform to widely accepted norms of human rights. Applicant has close, multiple family members who live in Iran. He has frequent contact with them. Under the circumstances, there is a significant possibility of pressure, coercion, exploitation or duress. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence and foreign preference.

In 2006, the Appeal Board addressed Guideline B cases involving relatives in Iran on at least seven occasions. While there is no *per se* requirement to deny clearances for United States citizens with relatives living in Iran, in 2006 all four Appeal Board cases involving Judge's decisions approving clearances were reversed. *See* ISCR Case No. 04-12500 (App. Bd. Oct. 26, 2006); ISCR Case No. 04-09541 (App. Bd. Sep. 26, 2006); ISCR Case No. 04-11463 (App. Bd. Aug. 4, 2006); ISCR Case No. 02-24566 (App. Bd. July 17, 2006). All three Appeal Board decisions involving Judge's decisions denying clearances were affirmed. *See* ISCR Case No. 02-28838 (App. Bd. Jun. 12, 2006); ISCR Case No. 03-23259 (App. Bd. May 10, 2006); ISCR Case No. 03-10954 (App. Bd. Mar. 8, 2006), *see also* ISCR Case No. 03-23236 (App. Bd. Feb. 17, 2006) (holding that delivery of Iranian passport to employer was insufficient to demonstrate relinquishment of passport). The Appeal Board has made it clear that the character of the Iranian government and an

applicant's contacts with family members living in Iran weighs very heavily towards denial of a clearance.

The evidence leaves me with grave questions and doubts as to Applicant's security eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁽²⁸⁾ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has failed to mitigate or overcome the government's case. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Paragraph 2, Guideline C: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Mark W. Harvey

Administrative Judge

1. Item 4, Electronic Standard Form (SF) 86, Security Clearance Application is dated April 22, 2004, on the first page. On the last page Applicant's signature appears twice with dates of April 22, 2004, and August 11, 2004 written nearby. There is no allegation of falsification of this SF 86 in the statement of reasons (SOR).
2. Item 1 (Statement of Reasons (SOR), dated May 25, 2006) at 1-2. Item 1 is the source for the remainder of this paragraph.
3. Item 3 (Applicant's response to SOR).
4. The Defense Office of Hearings and Appeals (DOHA) transmittal letter is not dated. It was served on Applicant on August 28, 2006.
5. *Id.* The DOHA transmittal letter informed Applicant that he had 30 days after receipt to submit information.
6. Item 3, *supra* note 3, is the source for all factual assertions in this paragraph.

7. Item 4, *supra* note 1, section 1.1, at 1.
8. *Id.*, section 6.1, at 2.
9. *Id.*, section 5, at 2.
10. *Id.*, section 11, at 5.
11. *Id.*, section 8, at 3.
12. *Id.*, section 3, at 1.
13. Item 3, *supra* note 3, at 1 is the source for the facts in the remainder of this paragraph, and the next paragraph, except as specifically indicated.
14. Item 5 (Statement to Special Investigator for the Office of Personnel Management, Investigations Service, dated January 31, 2005), at 2-3.
15. Item 6 (Sworn Interrogatories, notarized February 15, 2006) at 3-5 is the source for the facts in this paragraph.
16. Item 3, *supra* note 3, at 1.
17. Item 6, *supra* note 15, at 6.
18. *Id.*, at 8.
19. *Id.*, at 6.
20. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).
21. "The Administrative Judge consider[s] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).
22. ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (App. Bd. Feb. 8, 2001)
23. *Id.*
24. *Compare* ISCR Case No. 03-10954 (App. Bd. Mar. 8, 2006); *with* 50 U.S.C. § 1801(b) (both discussing or defining "agent of a foreign power").
25. Item 5, *supra* note 14, at 5.
26. ISCR Case No. 04-12500 at 3 (App. Bd. Oct. 26, 2006)(reversing Administrative Judge and ordering denial of clearance).
27. Item 6, *supra* note 14, at 3-5 is the source for the facts in this paragraph.
28. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).