

KEYWORD: Guideline B

DIGEST: The Judge's adverse conclusion under Guideline B are sustainable given his findings regarding Applicant's close tie to family members in Morocco. Adverse decision affirmed,

CASENO: 06-25979.a1

DATE: 04/16/2008

DATE: April 16, 2008

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In Re: )  
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----- ) ISCR Case No. 06-25979  
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Applicant for Security Clearance )  
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

James E. Corl, Jr., Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 28, 2007, DOHA issued a statement of reasons (SOR) 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 November 30, 2007, after the hearing, Administrative Judge Henry Lazzaro denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issues on appeal: whether certain of the Judge’s findings were not based upon substantial record 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 pertinent findings of fact: Applicant was born in Morocco and was solely a Moroccan citizen until she became a naturalized United States citizen in 2004. She also obtained a United States passport in June 2004.

Applicant has held an interim security clearance for approximately 18 months, after being hired by her employer without any adverse information being reported. Applicant’s character witnesses, consisting of supervisors and co-workers, consider her to be dependable, professional, diligent, conscientious, detail oriented, and very security conscious.

Applicant met her husband, a dual U.S. and Moroccan citizen, while he was visiting in Morocco in the late 1990s. They were married in Morocco. They have two children. Although Applicant testified she considers her children to be solely U.S. citizens, GE 4 indicates that children born to Moroccan fathers are considered by Moroccan law to be citizens of Morocco. Applicant’s husband immigrated to the U.S. sometime in the 1990s after marrying his cousin who was a U.S. citizen. He became a U.S. citizen about nine years ago. Applicant completed her education in Morocco. She has worked for her present employer since 2005.

Applicant’s parents are citizens and residents of Morocco. Her father is a retired clerk and her mother has never worked outside the home. They subsist on a pension her father receives, the income from a small business he operates, the \$600-700 Applicant sends them annually, and on additional financial assistance provided by her siblings. Applicant has weekly to bi-weekly telephone contact with her parents and with her sibling who resides with them. The only asset of any value owned by her parents is the house in which they live. Applicant estimated she will inherit about \$5,000 as her share of that house when her parents die.

Applicant has a brother who is a career officer in the Moroccan armed forces. Applicant has additional siblings who are citizens and residents of Morocco. A brother resides in Spain. Her brothers who reside in Morocco are all employed. The brother who resides in Spain formerly did home repair work but was unemployed as of the date of the hearing. One of her siblings resides with and cares for Applicant’s elderly parents. With the exception of the sibling who resides with her parents, Applicant has sporadic telephone and/or e-mail contact with her other siblings about once every other month.

Applicant's mother-in-law and father-in-law are also citizens and residents of Morocco. They are retired and divorced. Her mother-in-law never worked outside the home and presently is supported by a child who lives with her and her other children who reside in Spain. Applicant's father-in-law is retired from a foreign military service other than the Moroccan military.

In addition to the time she resided in Morocco to complete her education, Applicant visited there three times since emigrating to the U.S. Other than the trip to complete her schooling, Applicant's travels to Morocco were solely for the purpose of visiting relatives.

Applicant and her husband own a house in the U.S. She testified the house is not mortgaged and is valued at between \$30,000 and \$40,000. Her salary is \$62,000 annually. She has money withheld from her pay that is deposited in an educational account for the benefit of her children when they reach age 18. The only thing Applicant owns in Morocco is a small savings account for her use when she travels there and which currently has about a \$200 balance.

Morocco is a constitutional monarchy with long-standing ties to the U.S. It is viewed as stable and democratizing. Terrorist activity has occurred there in recent years. Additionally, there have been reports of arbitrary arrests; restrictions on freedom of speech, press, etc; lack of judicial independence, and police misconduct.

In the Conclusions section of his decision, the Judge noted, *inter alia*, Applicant's close ties to her family members and in-laws in Morocco, the dual-citizenship status of her husband, and the above-mentioned terrorist activity that has occurred in that country. The Judge stated that the evidence which Applicant presented was not sufficient to overcome the Guideline B security concerns which her case raised. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). (Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance); Directive ¶ E3.1.15. (After the government presents evidence raising security concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions.) "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Applicant's submission on appeal contains new evidence, which the Board cannot consider. *See* Directive ¶ E3.1.29 ("No new evidence shall be received or considered by the Appeal Board.") *See also* ISCR Case No. 06-22871 at 2 (App. Bd. Jan. 24, 2008); ISCR Case No. 06-17209 at 2 (App. Bd. Nov. 14, 2007). The Board gives due consideration to the Hearing Office cases which Applicant has cited in her appeal brief. However, such decisions are not binding on Hearing Office Judges or on the Board. ISCR Case No. 06-16704 at 2 (App. Bd. Jan. 30, 2008).

Applicant challenges several of the Judge's findings of fact. However, any errors in the Judge's findings are harmless in that they have not affected the outcome of the case. "There is ample support in the record for the Judge's adverse security clearance decision." ISCR Case. No. 04-09353 at 2 (App. Bd. Dec. 17, 2007).

The Board concludes the Judge has drawn “a rational connection between the facts found” and his ultimate adverse security clearance decision. *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)). Accordingly the Judge’s decision is not arbitrary, capricious, or contrary to law.

### **Order**

The Judge’s adverse security clearance decision 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