

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant’s father and sisters live in and are citizens of Iran. Applicant has been an American citizen since 1988. Applicant has made three trips were to Iran (in 1982, 2002-2003, and 2005-2006). The presence of some mitigating evidence does not alone compel the Judge to make a favorable clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. . The Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances, and considered possible application of relevant mitigating conditions and factors. Adverse decision affirmed.

CASENO: 07-02715.a1

DATE: 05/21/2008

DATE: May 21, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-02715
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

James J. McKee, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 11, 2007, 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 February 11, 2008, after the hearing, Administrative Judge Darlene Lokey-Anderson denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law because it was not based on substantial evidence.¹

Applicant contends that the Judge’s decision is “far removed from any realistic appreciation of the facts as to constitute an abuse of her discretion.” He disputes that he is vulnerable to influences of Iran that are inimical to the national interests of the United States just because his family members (father and sisters) live in and are citizens of Iran. In support of that contention, Applicant argues, among other things, that over the past 30 years he has developed solid roots in, and loyalty to, the United States, which far outweigh his weak, intermittent, and diminishing ties to family in Iran. Applicant has been an American citizen since 1988, and except for four trips outside the United States, has, at all times, remained in the United States. One trip was a business trip to a third country, and the three other trips were to Iran (in 1982, 2002-2003, and 2005-2006). The 1982 trip was intended to introduce his former wife and daughter to his family, and the other two were occasioned by his mother’s death and his father’s health. His two children, born of an American mother, have no connection to Iran, and his brother lives in the United States. Applicant argues that his relationship with his father and sisters in Iran is not “close and continuing” as the Judge had concluded, but merely exhibits the “minimal amenities and kindnesses” that most Americans exhibit in their own family relations. Finally, he argues that he has a “spotless” record as an employee handling classified materials for his employer, and he has demonstrated that he adheres to security requirements, is dedicated, and is an employee of integrity.

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 choices 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 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). 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 and E3.1.33.3.

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. *See Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. “The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light

¹The Judge made favorable findings for Applicant with respect to the SOR allegations under Guideline C, and these are not in issue in this appeal.

of the record evidence as a whole.” *See, e.g.*, ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006).

The presence of some mitigating evidence does not alone compel the Judge to make a favorable clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-09542 at 2 (App. Bd. Sep. 4, 2007). A review of the Judge’s decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying circumstances, and considered possible application of relevant mitigating conditions and factors. The Judge found in Applicant’s favor with regard to the allegations under Guideline C, but reasonably explained why the evidence which Applicant had presented was insufficient to overcome the government’s security concerns under Guideline B. The Judge articulated a reasonable concern that Applicant’s circumstances created a conflict of interest that could potentially make him vulnerable to coercion, exploitation or pressure.

Based on the record evidence, the Judge’s conclusion that there is “evidence of a close bond and strong evidence of affection” between Applicant and his family in Iran is sustainable. Decision at 8. Reviewing the evidence as a whole, it was reasonable for her to also conclude that none of the mitigating conditions in Guideline B apply. Applicant’s sense of loyalty to the family members in Iran is not minimal, and his contacts are not casual. Directive E2.8. The government’s security concern is based on close family ties in Iran, considered in the context of the overall political/security profile of that country *vis-a-vis* the United States. The Judge also specifically considered Applicant’s evidence of a commendable workplace performance, integrity, and adherence to security requirements, but workplace performance may not overcome the security concerns caused by his family circumstances. *See, e.g.*, ISCR Case No. 06-04371 at 2 (App. Bd. Oct. 18, 2007). The Judge’s decision exhibits a discerning weighing of a number of variables to reach a commonsense determination. Directive ¶ E2.2. An applicant’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 04-08116 at 2 (App. Bd. Jul. 2, 2007). The Judge has articulated a rational explanation for her unfavorable determination under the disqualifying and mitigating factors and the whole-person concept, and there is sufficient record evidence to support that determination—given the standard that required the Judge to err on the side of national security. *See, e.g.*, ISCR Case No. 06-04371 at 3 (App. Bd. Oct. 18, 2007).

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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