

KEYWORD: Guideline B

DIGEST: Applicant holds an Iranian passport. Her grandparents are citizens and residents of Iran. Since becoming a US citizen she has traveled to Iran annually. Applicant presented very little evidence in mitigation. Favorable decision reversed.

CASENO: 07-13175.a1

DATE: 01/12/2009

DATE: January 12, 2009

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In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Paul. M. DeLaney, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 15, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 30, 2008, after considering the record, Administrative Judge John Grattan Metz, Jr., granted Applicant’s request for a security clearance. Department Counsel filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge’s application of the Guideline B and C mitigating conditions was arbitrary, capricious, or contrary to law. Finding error, we reverse.

### **Whether the Record Supports the Judge’s Factual Findings**

#### **A. Facts**

Applicant was born in Iran and immigrated to the U.S. in the late 1990s. She became a naturalized U.S. citizen in 2005. Her mother is a naturalized U.S. citizen and her father is in the final stages of obtaining such citizenship. Applicant’s sister is a citizen and resident of Iran, although she “has been approved for her visa to immigrate to the U.S. . . . Applicant has regular contact with her sister.” Decision at 2. Her maternal grandparents are citizens and residents of Iran. Since immigrating to the U.S., Applicant has traveled to Iran approximately annually, mostly to visit her sister. She has a U.S. passport and holds an Iranian passport as well. The Iranian passport expires in late 2009. Each time she has visited Iran, she has used her Iranian passport, even following her attainment of U.S. citizenship. “Initially, she expressed an intent to retain her Iranian passport . . . but in her answer stated a willingness to surrender it. At hearing, she revealed that she has begun the process of surrendering her Iranian passport to Iranian authorities . . .” *Id.*

Iran is a fundamentalist Islamic republic with a poor human rights record. It is a sponsor of international terrorism and supports violent opposition to the Middle East peace process. U.S. citizens may be subject to harassment or arrest while traveling in Iran, and those of Iranian origin risk being targeted by authorities.

#### **B. Discussion**

The Appeal Board’s review of the Judge’s findings of fact is limited to determining if they are supported by substantial evidence—“such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” 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 an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). In evaluating the Judge’s findings, we are required to give deference to the Judge’s credibility determinations. Directive ¶ E3.1.32.

## Whether the Record Supports the 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 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 (9<sup>th</sup> 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 of the record evidence as a whole.” *See, e.g.*, ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006).

In deciding whether the Judge's rulings or conclusions are arbitrary or capricious, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. In deciding whether the Judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

The Judge made a sustainable conclusion that the totality of the record evidence establishes security concerns under Guidelines B and C. However, Department Counsel argues that the Judge erred in his further conclusion that Applicant had met her burden of persuasion as to mitigation. The Board notes Official Notice documents describing the challenges posed to the U.S. by Iran, including its efforts to develop WMD;<sup>1</sup> the President’s establishment of a state of emergency to address these problems;<sup>2</sup> and efforts of the Iranian government to monitor the private activities of citizens.<sup>3</sup>

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<sup>1</sup>U.S. Department of State Background Note: Iran, March 2008, at 9.

<sup>2</sup>Message of the President to the Congress of the United States, March 11, 2008: “The actions and policies of the Government of Iran are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States . . . I have determined that

Applicant presented no exhibits at the hearing, nor did she file a brief on appeal. Given the security concerns posed by the presence of Applicant's relatives in Iran and the paucity of mitigating evidence, the record as a whole does not support a conclusion that Applicant has met her burden of persuasion as to mitigation. Accordingly, the Judge's favorable security clearance decision is not sustainable.

**Order**

The Judge's favorable security clearance decision is REVERSED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan  
Administrative Judge  
Chairman, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board

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it is necessary to continue the national emergency declared with respect to Iran and maintain in force comprehensive sanctions against Iran to respond to this threat.”

<sup>3</sup>See U.S. Department of State Country Reports on Human Rights Practices, March 11, 2008, at 9: “Security forces monitored the social activities of citizens, entered homes and offices, monitored telephone conversations and internet communications, and opened mail without court authorization.”