

KEYWORD: Guideline B

DIGEST: Several members of Applicant's family citizens of Iran and five of them reside in Iran. The Judge's material findings of security concern are supported by substantial record evidence. Adverse decision affirmed

CASENO: 07-13209.a1

DATE: 10/06/2008

DATE: October 6, 2008

_____	)	
In Re:	)	
	)	
-----	)	ISCR Case No. 07-13209
	)	
Applicant for Security Clearance	)	
_____	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Esq., Department Counsel

**FOR APPLICANT**

Aleksander Lamvol, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 8, 2008, 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 June 25, 2008, after the hearing, Administrative Judge Darlene Lokey-Anderson 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 certain of the Judge’s factual findings were supported by substantial record evidence; whether the Judge erred in failing to address heightened risk under Guideline B Disqualifying Condition 7(a);<sup>1</sup> whether the Judge erred in her application of the mitigating conditions; and whether the Judge erred in her whole person analysis. Finding no harmful error, we affirm.

The Judge made the following sustainable findings of fact: Applicant was born in Iran. He came to the U.S. in the mid-1970s to attend college. He married a U.S. citizen in the mid-1980s, and they had two children, who are also native-born U.S. citizens. Applicant is a mechanical engineer for a defense contractor. He has held a security clearance since 1990 with no security violations.

In 2003, Applicant married an Iranian woman, who is currently a permanent resident. Applicant sponsored his wife’s child from a prior marriage and her Iranian parents to come to the U.S. Applicant subsequently filed for divorce from his second wife, which action was still pending at the close of the record. Applicant’s wife and stepchild are Iranian citizens. His parents-in-law and brother-in-law are residents and citizens of Iran. Additionally, Applicant’s father and brother are residents and citizens of Iran. Applicant has another brother who, though an Iranian citizen, resides in a European country. He also has a sister who is an Iranian citizen residing in another middle-eastern country.

Applicant’s mother is a naturalized U.S. citizen. She divides her time between the U.S. and Iran. At the close of the record, Applicant’s mother was living in Iran caring for Applicant’s ailing father. Applicant maintains telephone or e-mail contact with his parents and siblings about once a month. He has also sent birthday and wedding gifts to his Iranian relatives. Applicant has traveled to Iran on five occasions from the late 1970s through the mid-2000s. Each time, he used an Iranian passport, although he has subsequently surrendered it to his company’s security office.

Iran has no diplomatic ties with the U.S. It supports international terrorism, commits human rights violations, and is attempting to develop weapons of mass destruction.

The Board concludes that the Judge’s material findings of security concern are supported by substantial record evidence. *See* Directive ¶ E3.1.32.1. (Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the

---

<sup>1</sup>Directive ¶ E2.7(a): “contact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion[.]”

contrary evidence in the same record.”) To the extent that the Judge’s findings contain error, the Board concludes that such error is harmless. *See* ISCR Case No. 06-23112 at 2 (App. Bd. Dec. 31, 2007).<sup>2</sup> Applicant states that the Judge erred by not analyzing the heightened risk clause of Disqualifying Condition 7(a). Given that the relatives are in Iran, a hostile country with a “dismal human rights record,” the Judge’s failure to discuss this issue is at most harmless error. In light of the record as a whole, the Judge has drawn a rational connection between the facts found and her ultimate adverse security clearance decision, both as regards the mitigating conditions and the whole-person factors. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). *See also 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 Judge’s decision that “it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant” is sustainable on this record. Decision at 8. *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 the national security’”). *See also* ISCR Case No. 06-18918 at 2 (App. Bd. May 23, 2008), citing ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (“[A]n applicant with family members living in a country hostile to the U.S. bears a ‘heavy burden’ in demonstrating that those family members do not pose a security risk”).

### Order

The Judge’s adverse security clearance decision is AFFIRMED.

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

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

---

<sup>2</sup>For example Applicant argued that the Judge erred in stating that Applicant still has contact with his current wife and stepchild. The only record evidence explicitly on point is to the effect that he does not have contact with these persons. *See, e. g.*, Answers to Statement of Reasons; Tr. at 50. However, even if the Judge had made a finding on this matter consistent with this evidence, such a finding would not likely have resulted in a favorable security clearance decision when viewed in light of the record as a whole.

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board