KEYWORD: Guideline B

DIGEST: Individual statements by a Judge must be viewed in the context of the entire decision, not in isolation. Applicant failed to mitigate security concerns arising from ties to Iran. Adverse decision affirmed.

CASENO: 07-13739.a1

DATE: 11/12/2008

DATE: November 12, 2008

In Re:	)	
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	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT
Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On January 10, 2008, DOHA issued a statement of reasons 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 timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's conclusion that Applicant

is vulnerable to foreign influence due to his close relationships with family members in Iran renders her decision arbitrary, capricious, or contrary to law. Finding no harmful error, we affirm.

The Judge made the following relevant findings of fact: Applicant, who is 51 years of age, emigrated to the United States from Iran as a young man. Applicant is now an American citizen. Applicant's wife, who is from another country, has applied for American citizenship, and their children are native-born U.S. citizens. Applicant has an Iranian passport, which he has used to visit Iran for family reasons. The passport is currently invalid.

Applicant has family members in Iran and contacts them about once a month. He contacts an uncle about once every two months and corresponds with a nephew by e-mail. Applicant has sent money to his family in Iran when there has been need. He believes the total he has given does not exceed $10,000.

Applicant's supervisor testified as to Applicant's expertise in his field and his excellent job performance, and a neighbor wrote a letter as to Applicant's honesty and trustworthiness.

Iran does not have diplomatic relations with the United States. Iran supports and is involved in international terrorism; it supports violent opposition to the Middle East peace process. Iran is attempting to acquire nuclear weapons and other weapons of mass destruction. Iran has a dismal human rights record, and corruption is rampant at all levels of the Iranian government.

In his appeal, Applicant lists nine items in the Judge's decision which he considers to be factual errors. He argues that the Judge placed too much weight on his relationship with family members in Iran and not enough on his ties to the United States, and that the Judge's decision is therefore arbitrary, capricious, and contrary to law.

The Appeal Board's review of the Judge's findings of facts 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 ¶ E3.1.32.1.

Only one of the nine items listed by Applicant is an error of fact. The Judge stated that Applicant validated his Iranian passport before each of his trips to Iran, when in reality he did so for only one of the trips.[1] Applicant used his Iranian passport for his trips, but he only needed to renew it once, since it was current when he next traveled to Iran. Accordingly, the error is harmless, since it is unlikely, considering the decision as a whole, that Judge would have reached a different result

[1]The Judge's statement about validation apparently refers to confusion in Applicant's testimony. "Q: And when did you validate it to go back? A: Prior to my trips. . . ." However, Applicant then stated that his passport was still valid when he traveled again and did not need to be renewed. Transcript at 43.

in the absence of the error.

Applicant objects to the conclusion on page 7 of the Judge's decision that Applicant is a dual citizen of Iran and the United States. He states that there is no evidence that he is a citizen of any other country. Applicant's assertion on this point has mixed merit. Resolution of this claim of error is complicated by the fact that the Judge concluded, "The Applicant is a dual citizen of Iran and the United States" but did so without explanation. The record evidence establishes that Applicant exercised Iranian citizenship through the use of an Iranian passport after he obtained U.S. citizenship in 1990, and there is record evidence that Iran currently considers Applicant a citizen of Iran by operation of Iranian law. However, there is no record evidence that Applicant, either through statements or deeds, currently holds himself out as a dual citizen of the United States and Iran.

In support of her argument that there is sufficient evidence to support the Judge's conclusion that Applicant is a dual citizen of the U.S. and Iran, Department Counsel points to Applicant's affirmative answer to Section 8, Item d of his December 4, 2006 security clearance application.[2] However, that portion of the application asks if Applicant is *or was* a dual citizen of the United States and another country. There is no additional evidence that sheds light on what Applicant was indicating when he answered the question. Therefore, the answer does not provide clear evidence to support a conclusion that Applicant considered himself a dual citizen at the time he completed the application. Department Counsel also points to Applicant's hearing testimony, wherein he discusses dual citizenship solely in the context of maintaining an Iranian passport. Applicant stated only that it was his belief that Iran considered him a dual citizen because he held an Iranian passport and validated it for use to make trips to Iran.[3] Applicant last used his Iranian passport in 2005 and it has since expired. Applicant's testimony established only that he used his Iranian passport in the past, and that it was his belief that his continuing status as an Iranian citizen in the eyes of the Iranians was based upon his holding of an Iranian passport, albeit an expired one. Applicant also testified that he had no intention of revalidating his Iranian passport, and at no point in the record did he indicate that he considers himself an Iranian citizen independent of his understanding of the viewpoint of the Iranian government.

The fact that the Iranian government considers Applicant an Iranian citizen has some security significance in the context of this case. However, that factor is different from a situation where Applicant continues to use a valid Iranian passport or otherwise voluntarily holds himself out as a dual citizen of the U.S. and Iran. The Judge's declaration of Applicant as a dual citizen is therefore problematic inasmuch as she does not inform as to what "dual citizen" means with reference to this Applicant or how the concept of dual citizenship shapes the Judge's analysis in the overall context of the case under Guideline B. While remanding the case to the Judge would remedy these deficiencies, the Board concludes that remand is unnecessary inasmuch as there is other record evidence that supports the Judge's ultimate decision.

Applicant also complains on appeal that the Judge employed the wrong standard when

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[2]Government Exhibit 1.

[3]Transcript at 42-43.

assessing the security significance of his family ties to Iran. Applicant points out that Guideline B speaks in terms of foreign contacts creating a "heightened risk"of foreign exploitation or coercion. Applicant then focuses on the following passage from the Judge's decision: "It does not go unrecognized that for the past thirty years he has worked hard to establish himself as a responsible, educated, American citizen. However, he has not cut all ties from Iran."[4] Applicant asserts the possibility that a person may well not cut all ties from his former country without the remaining ties resulting in heightened risk.

Applicant's argument is not a frivolous one. To the extent that the Judge's statement about ties to the former country implies or asserts that *any* such ties automatically create a situation of heightened risk, that statement is error. Obviously, the nature and strength of those ties is important in an accurate assessment of the overall risk, and there is no requirement under the Directive that an applicant sever all ties with a foreign country before he or she can be granted access to classified information. Individual statements or portions of a Judge's decision are not reviewed in isolation, however. The entire decision must be considered when making a determination of the harmfulness of the error. After reviewing the Judge's decision, the Board concludes that the statement about cutting all ties was not a critical component in the Judge's overall assessment of the government's security concerns under Guideline B. Likewise, the Board is convinced, after reviewing pertinent parts of the Judge's analysis, that she employed the correct standard when evaluating Applicant's connections to Iran.

Applicant's other allegations of error pertain to the Judge's conclusion that Applicant is vulnerable to foreign influence due to his close relationships with family members in Iran. Applicant argues that the Judge placed too much weight on those relationships. After reviewing the record, the Board concludes that the Judge's findings are based on substantial evidence or are reasonable characterizations or inferences that could be drawn from the record. Applicant has not identified any harmful error likely to change the outcome of the case. Considering the record as a whole, the Judge's findings as to Applicant's close ties with family in Iran are central to her overall analysis of the case and, with the exception of the harmless errors discussed above, are sustainable.

Once the government presents evidence raising security concerns, the burden shifts to the applicant to mitigate those concerns. Directive ¶ E3.1.15. Applicant argues that he presented enough mitigating evidence in terms of his ties to the United States that the Judge should have granted him a clearance. The Judge found some evidence of mitigation. However, that alone did not compel the Judge to make a favorable security 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, or *vice versa.* 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. 07-05809 at 2 (App. Bd. May 27, 2008).

After reviewing the record as a whole, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for her decision, "including a 'rational

[4]Decision at 7.

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, 158 (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). Accordingly, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board