

KEYWORD: Guideline C; Guideline B

DIGEST: The Judge’s material findings of security concern are supported by substantial record evidence. The errors contained in the “Summary of Pleadings” section of the decision do not impugn the sufficiency of the Judge’s findings of fact. The Judge considered the wife in the context of Applicant’s in-laws, who are citizens and residents of Iran. There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse. Applicant challenges the Judge’s weighing of the mitigating evidence. The weighing of the evidence is within a Judge’s discretion and will not be disturbed by the Board absent a showing that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law, or not supported by the record as a whole. There is no such showing here. Adverse decision affirmed

CASENO: 08-01282.a1

DATE: 03/30/2009

DATE: March 30, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-01282
)	
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Susan Mary Rotkis, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 14, 2008, 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 January 12, 2009, after the hearing, Administrative Judge Roger C. Wesley denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s findings of fact are supported by substantial record evidence; whether the Judge erred in admitting certain official notice documents; and whether the Judge erred in failing to mitigate the Guideline B security concerns in his case.¹ Finding no harmful error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an information technology manager. He was born and raised in Iran. He attended college in the U.S., graduating in the mid-1980s. About the same time, he received permanent resident status. Applicant became a U.S. citizen in the early 1990s. He renewed his Iranian passport in the late 1990s upon discovering that he would need it to travel to Iran. He has since let it expire. Applicant’s wife was born in Iran. She met Applicant in the late 1990s during a trip to another country. She immigrated to the U.S. on a “fiancé visa.” She and Applicant were married shortly thereafter. Applicant’s wife’s parents are citizens and residents of Iran who have applied to immigrate to the U.S. Applicant’s wife talks with her parents monthly, while Applicant speaks with them every three months. Applicant has traveled to Iran twice since becoming a U.S. citizen, the second time along with his wife for the purpose of having a formal wedding. Applicant’s wife made a trip to Iran in the late 2000s to visit her parents. She used her Iranian passport for travel and retains the option of renewing it should circumstances require a return to Iran. The U.S. does not have diplomatic relations with Iran, which has committed serious human rights violations in recent years. Iran does not recognize dual nationals, treating them as Iranian citizens. Persons of Iranian birth who have become U.S. citizens risk detention absent “persuasive proof of their formal renunciation or loss of their Iranian citizenship[.]” Decision at 8

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 contrary evidence in the same record.”) The errors contained in the “Summary of Pleadings” section of the decision do not impugn the sufficiency of the Judge’s findings of fact. Viewed in light of the record as a whole, any errors in the Judge’s findings are harmless. *See* ISCR 01-23362 at 2 (App.

¹The Judge’s favorable findings under Guideline C are not at issue in this appeal.

Bd. Jun. 5, 2006); ISCR Case No. 03-09915 at 4 (App. Bd. Dec. 16, 2004); ISCR Case No. 01-11192 at 4-5 (App. Bd. Aug. 26, 2002). Applicant argues on appeal that the Judge erred in assigning security significance to Applicant's wife, since she was not the subject of a SOR allegation. However, the Judge considered the wife in the context of Applicant's in-laws, who are citizens and residents of Iran. "[I]n-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005).

Applicant challenges the Judge's weighing of the mitigating evidence, which Applicant characterizes as "overwhelming." The weighing of the evidence is within a Judge's discretion and will not be disturbed by the Board absent a showing that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law, or not supported by the record as a whole. *See, e. g.*, ISCR Case No. 05-10921 at 2 (App. Bd. Apr. 19, 2007). There is no such showing here.

The Board finds no error in the manner in which the Judge addressed security concerns arising out of Applicant's in-laws.² After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 Judge's decision that "[it is not clearly consistent with the national interest to grant or continue Applicant's security clearance" is sustainable on this record. Decision at 16. *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'").

Order

The Judge's adverse security clearance decision is AFFIRMED.

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

²"[U]pon fully considering Applicant's explanations about his wife's strong relationships with her parents, [wife's] own accounts of her visits and regular contacts with her parents residing in Iran, and [wife's] continued access to her parents through her retained Iranian passport, risks of undue foreign influence on Applicant, his wife and her family members residing in Iran cannot be safely discounted." Decision at 13.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board