

due to his Iranian origin and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant was born in Iran. He served in the Iranian Navy for three months. Subsequently he immigrated to the U.S. to attend college. He holds a Master's degree in electrical engineering and is a systems engineer for a Defense contractor. He became a U.S. citizen in the early 1990s and has held a security clearance since the late 1990s. He is married to a U.S.-born citizen and has two children, both of whom were born in the U.S.

Applicant has five siblings who are citizens of Iran. Three of them are also residents of Iran. He communicates with each of his family members one to three times a year. Applicant enjoys an excellent reputation for professionalism and job performance.

Iran is engaged in efforts to obtain weapons of mass destruction, supports international terrorism, and has a poor human rights record. It has no diplomatic relations with the U.S.

In the Conclusions section of the decision, the Judge noted that Applicant has lived in the U.S. for many years and has long held a security clearance. However, she noted evidence of Applicant's affection and concern for his siblings and that he maintains regular contact with them. The Judge concluded that these bonds of affection are a means through which Applicant might be subjected to foreign coercion. Accordingly, she concluded that Applicant had not mitigated the security concerns in his case.

Regarding the claim of bias, Applicant contends that his record raises no security concerns and that he is being unfairly singled out because of his Middle Eastern heritage. He has provided no support for this contention, other than his disagreement with the Judge's weighing of the evidence. There is a rebuttable presumption that a Judge is impartial and unbiased and a party seeking to overcome that presumption has a heavy burden on persuasion. *See, e.g.*, ISCR Case No. 07-02253 at 3 (App. Bd. Mar. 28, 2008); ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004). In this case, Applicant has five close relatives who are citizens of Iran, three of whom are also residents of that country, and with whom he communicates by telephone. The Board notes the 2008 Department of State *Human Rights Report* on Iran, which is included in the Official Notice documents. Among other things, this document demonstrates that, during the year in question, Iranian officials "monitored the social activities of citizens, entered homes and offices, monitored telephone conversations and internet communications and opened mail without court authorization." The evidence supports a conclusion that Applicant's relatives are a means through which Applicant might come to the attention of the Iranian authorities. The Board has long held that there is a rational connection between an applicant's family ties in a country whose interests are adverse to the United States and the risk that the applicant might fail to protect and safeguard classified information. ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002). Accordingly, we conclude that Applicant has failed to rebut the presumption that the Judge acted impartially.

Applicant points out that he has held a security clearance for a number of years without incident. However, prior decisions to grant or retain a clearance do not undermine the legal

sufficiency of a Judge's subsequent adverse decision. "The government is not estopped from making an adverse clearance decision when there were prior favorable adjudications." ISCR Case No. 07-17383 at 2 (App. Bd. Feb. 12, 2009), quoting ISCR Case No. 03-04927 at 5 (App. Bd. Mar. 4, 2005). Although Applicant has had no previous security infractions, the government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. ISCR Case No. 08-00435 at 3 (App. Bd. Jan. 22, 2009), citing *Adams v. Laird*, 420 F. 2d 230, 238-239 (D.C. Cir. 1969), *cert. denied* 397 U.S. 1039 (1970). Applicant's good security record is evidence the Judge was bound to consider; however, it is not enough to demonstrate mitigation as a matter of law.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated 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 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 7. "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).

Order

The Judge's adverse security clearance decision 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: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board