

KEYWORD: Guideline B

DIGEST: In foreign influence cases the nature of the foreign government involved, the intelligence gathering history of that government and the presence of terrorist activity are important considerations that provide context for the other record evidence and must be bought to bear on the conclusions in the case. Favorable decision reversed.

CASENO: 08-10099.a1

DATE: 01/28/2011

DATE: January 28, 2011

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In Re: )	
)	
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Applicant for Public Trust Position )	
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Alison O’Connell, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a trustworthiness designation. On November 20, 2009, DOHA issued a statement of reasons (SOR)

advising Applicant of the basis for that decision—trustworthiness 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 September 29, 2010, after the hearing, Administrative Judge Edward W. Loughran granted Applicant’s request for a trustworthiness designation. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge erred in his application of the pertinent mitigating conditions and whether the Judge’s whole-person analysis was erroneous. Consistent with the following discussion, we reverse the decision of the Judge.

## **Facts**

The Judge made the following pertinent findings of fact. Applicant is an engineer employed by a Defense contractor. Born in Iran, Applicant married her Iranian-born husband and immigrated to the U.S. in the early 1990s. Her husband was a U.S. citizen at the time of the marriage. Applicant’s parents are citizens and residents of Iran, as are her four siblings. Her mother-in-law and a sibling-in-law are citizens and residents of Iran as well. None of Applicant’s or her husband’s immediate family members work for the Iranian government. Applicant retained her Iranian passport after she became a U.S. citizen. She traveled to Iran on this passport twice after becoming a U.S. citizen, although she has since destroyed it.

Iran and the U.S. have not had diplomatic relations since 1980. Iran is attempting to develop weapons of mass destruction. Additionally, it is the world’s leading state sponsor of terrorism, supports violent opposition to the Mid-East peace process, and has a poor human rights record. It has provided “lethal support for groups that are directly responsible for hundreds of U.S. casualties.” Decision at 3. The government of Iran has committed numerous serious abuses of human rights, including political killings, disappearances, torture, arbitrary arrest and detention, denial of due process, and severe restrictions on civil liberties. Iran does not recognize dual citizenship. Accordingly, it considers those born in Iran to be Iranian citizens. The Judge’s findings are not challenged on appeal.

## **Discussion**

We may reverse the Judge’s decision to grant, deny, or revoke a trustworthiness designation if it is arbitrary, capricious, or contrary to law. *See* Directive ¶¶ E3.1.32.3 and E3.1.33.3. Once the government presents evidence raising trustworthiness concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions. *See* Directive ¶ E3.1.15. In deciding whether the Judge’s rulings or conclusions are in error, we 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. *See* ADP Case No. 06-12901 at 4 (App. Bd. Jul. 31, 2007).

Department Counsel argues that the Judge's decision extended too much weight to evidence that none of Applicant's family members worked for the Iranian government. She argues that the Judge did not consider the extent to which Iran could influence Applicant's family regardless of any government connections. Department Counsel's argument is persuasive.

In Foreign Influence cases, the nature of the foreign government involved, the intelligence gathering history of that government, and the presence of terrorist activity are important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. *See, e.g.*, ADP Case No. 06-14978 at 3 (App. Bd. Oct. 11, 2007); ADP Case No. 06-24818 at 2 (App. Bd. Oct. 24, 2007). The country's human rights record is also an important consideration. *See, e.g.*, ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007); ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006). 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 information entrusted to him or her by virtue of occupying a public trust position. *See, e.g.*, ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002); ADP Case 06-24818, *supra*. Moreover, in-laws represent a class of persons who are contemplated by the Directive as presenting a potential 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 persons' spouse. *See, e.g.*, ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005).

In this case, Applicant's foreign relatives, to include her in-laws, her use of an Iranian passport to travel to Iran after having acquired U.S. citizenship, and Iran's status as a nation whose interests are adverse to those of the U.S. cumulatively established Guideline B trustworthiness concerns. However, the Judge's conclusion under Mitigating Condition 8(a)<sup>1</sup> that Applicant's relatives have no incentive to bring Applicant to the attention of the authorities fails to address an important concern under Guideline B. That concern is expressed in ISCR Case No. 03-24933 at 8 (App. Bd. Jul 28, 2005), in which the Appeal Board observed:

There is no good reason to assume that a foreign country with an authoritarian government that has been . . . involved in state-sponsored terrorism would have compunctions about exerting influence or pressure on its citizens just because they lack prominence or live modest, ordinary lives.

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<sup>1</sup>Directive, Enclosure 2 ¶ 8(a): "the nature of the relationships with foreign persons, the country in which these person are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S."

Moreover, an applicant's relatives' obscurity does not provide a meaningful measure of whether an applicant's circumstances pose a risk, when, for example, the relatives are subject to the authority of a regime that is hostile to the U.S. and has a dismal human rights record. *See, e.g.*, ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009); ADP Case No. 05-17812 at 3 (App. Bd. Jun. 11, 2007). The Judge's discussion does not adequately explain his apparent conclusion that Applicant would not likely be placed in a position of choice between the interests of her Iranian relatives and the interests of the U.S., which is crucial to Mitigating Condition 8(a). Accordingly, the Judge's analysis fails to consider an important aspect of the case. ADP Case No. 06-12901, *supra*.

Similarly, the record will not support the Judge's favorable application of Mitigating Condition 8(b).<sup>2</sup> The Judge's treatment of this mitigating condition is rather cursory. He states that Applicant has such longstanding loyalties within the U.S. that she could be expected to resolve any conflict of interest in favor of the U.S. However, for similar reasons to those outlined above, he does not explain how the evidence supports a conclusion that Applicant would necessarily resolve conflicts of interest against the interests of her own close family in Iran. The Judge's favorable application of Mitigating Condition 8(b) is erroneous. Furthermore, Department Counsel persuasively argues that the Judge's whole-person analysis merely repeats his conclusion under the mitigating conditions and does not provide an independent basis for his favorable decision.

After reviewing the record, the Judge's decision, and the briefs of the parties, we conclude that the Judge's decision fails to consider an important aspect of the case and that it runs contrary to the weigh of the record evidence. Accordingly, the Judge's favorable decision is not sustainable on this record.

### **Order**

The Judge's favorable trustworthiness determination is REVERSED.

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

Signed: Jeffrey D. Billett

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<sup>2</sup>Directive, Enclosure 2 ¶ 8(b): "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S. that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest."

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody \_\_\_\_\_  
James E. Moody  
Administrative Judge  
Member, Appeal Board