

KEYWORD: Guideline B

DIGEST: Record reasonably supports Judge’s finding concerning the number of times Applicant’s mother visited Iran. The Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASE NO: 10-01273.a1

DATE: 08/22/2011

DATE: August 22, 2011

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In Re:)	
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-----)	ISCR Case No. 10-01273
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 10, 2010, 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 May 31, 2011, after the hearing, Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable decision.

The Judge made the following pertinent findings of fact: Applicant is a 30-year-old single man with no children. He is an Iranian-American born and raised in the United States. His parents immigrated to the United States from Iran after the Iranian revolution in 1979. Both parents are naturalized U.S. citizens. The Iranian government considers Applicant to be an Iranian citizen by virtue of his father's Iranian citizenship. Applicant's mother and father divorced approximately ten years ago. Since the divorce, Applicant's contact with his father has been sporadic. Applicant lives with his mother, sister, nephew, half-sister, and brother-in-law. Applicant's mother is a hair stylist. She became a naturalized citizen in the early 1990s. She has no Iranian property interests. She traveled to Iran nearly every year over the past decade to visit her family. She has not visited since 2008 because of the political instability. She intends to return in the future. Applicant traveled with his mother to Iran in 2003 and 2008 to visit relatives and sightsee.

Applicant's brother-in-law is an Iranian citizen with permanent U.S. residency status. Applicant's maternal grandmother lives in Iran. Applicant has five maternal uncles living in Iran. Applicant has several cousins who are either living in Iran or are Iranian citizens living elsewhere.

Iran is a brutally repressive theocracy that is virulently anti-American, and seeks to dominate the Middle East through sponsoring terrorism, fomenting unrest in other countries, and developing weapons of mass destruction. Iran's government employs draconian methods such as torture, rape, flogging, and amputations of dissenters to instill fear and retain power. Since 2007, several U.S. citizens have been detained by the Iranian government and held without consular access.

The Judge reached the following conclusions: Although friendly countries can engage in activities involving coercion, persuasion or duress of an individual to gather classified information as readily as hostile countries, the risk of such activity is heightened with hostile countries because such countries are not likely to have scruples about pressuring one of its citizens to obtain classified information. Although Applicant's contact with his relatives living in Iran is casual and infrequent, his mother travels to Iran nearly every year and intends to return. Because Iran is a country where U.S. travelers have been detained over the years, Applicant's mother's trips to Iran generate a security concern. Applicant is an impressive individual who testified in an engaging manner. Given the frequency of his mother's trips to Iran, and the nature of the Iranian government, the burden is simply too high for him to overcome. Applicant has failed to mitigate the foreign influence security concern.

Applicant asserts that the Judge misinterpreted the testimony and admissions he made at the hearing, and states that the Judge's finding that Applicant's mother has visited Iran nearly every year in the last ten years is incorrect. Applicant states that his mother has traveled to Iran only four times in the last ten years and has not been there since 2008. Applicant also alleges that his mother currently has no plans to go to Iran in the future because of increased security concerns. Applicant also states that his mother feels a sense of patriotism to the United States and would never do anything to jeopardize her safety, his safety or the national security. Applicant also states that his honesty, strong work ethic and sense of patriotic duty to the United States support a favorable security clearance decision. Applicant's assertions do not establish error on the part of the Judge.

The record evidence does not establish exactly how many times Applicant's mother has traveled to Iran since she made her initial trip back to that country in approximately 2002.

Applicant's entire testimony on this point consists of the following: "And she goes—she tries to go maybe— she was trying to go once a year for the first few years. And now she hasn't gone in the last two years. So, we can say she likes to visit maybe once a year." Although lacking in detail on the precise point, the record evidence reasonably supports, through inference, the Judge's finding that Applicant's mother has visited Iran nearly every year since 2002. Regarding Applicant's mother's future intentions regarding travel to Iran, the record evidence indicates that, although she does not want to go back at the present time owing to concerns about current conditions in Iran, there is the possibility that she would go back at some point in time out of a desire to see her aging mother. The evidence also reflects that Applicant's mother maintains an active Iranian passport. This evidence reasonably supports the Judge's finding that Applicant's mother intends to return to Iran in the future.

Applicant attempts to clarify this evidence on appeal by stating that his mother has returned to Iran only four times since 2002, and by asserting that "My mother's intention to return to Iran in the future is not a possibility." These matters constitute new evidence, which the Board cannot consider. Directive ¶ E3.1.29.

As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. A party'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. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and factors. He discussed the applicability of the mitigating factors listed under Guideline B and, in fact, applied those factors in Applicant's favor for the large portion of the Government's case that dealt with Applicant's Iranian relatives other than his mother. The Judge nevertheless explained why the security concerns surrounding Applicant's mother were unmitigated. These conclusions were reasonable given the Judge's findings regarding the likelihood of Applicant's mother's future physical presence in Iran and the risks inherent in that presence given the nature of the Iranian regime.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

Order

The decision of the Judge 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