

KEYWORD: Guideline C; Guideline B

DIGEST: A clearance adjudication is an opportunity for an applicant to demonstrate that, prior to being awarded a clearance, he actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with the U.S. Adverse decision affirmed.

CASE NO: 10-09986.a1

DATE: 12/15/2011

DATE: December 15, 2011

In Re:	)	
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	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Darin Groteboer, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 9, 2011, 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 September 30, 2011, after the hearing, Administrative Judge Elizabeth M. Matchinski 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 the Judge erred in her application of the pertinent mitigating conditions and whether the Judge’s whole-person analysis was erroneous. The Judge’s favorable findings under Guideline C are not at issue in this appeal. Consistent with

the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a senior member of a technical staff for a university-affiliated laboratory, a Defense contractor. Born in Iran, he came to the U.S. in the late 1970s. He married a U.S. citizen, but the couple divorced within a year. Applicant remained in the U.S., earning undergraduate and graduate degrees in engineering.

Applicant became a naturalized U.S. citizen in the late 1980s. Although he acquired a U.S. passport, he renewed his Iranian passport in order to travel to Iran and marry his current wife. He traveled to Iran twice in the mid-to-late-2000s, both times using his Iranian passport. Iran would not have given him a visa if he had not used it. Applicant's employer established a policy whereby it would hold the passports of dual-nationality employees until the passports expired, the employees left their jobs, or they requested that it be returned. Subsequently Applicant surrendered his Iranian passport to his employer.

One day after doing so, he submitted his security clearance application (SCA), in which he stated that he had surrendered his Iranian passport to his employer. One day after that, he traveled to Iran using the Iranian passport. He turned the passport back over to his employer when he returned. His employer submitted an incident report, and an interim clearance which Applicant had been granted was revoked. In a footnote, the Judge stated that Applicant had said nothing in his SCA about his imminent trip to Iran. She concluded that he would most likely have had to have retrieved the passport in the days preceding the execution of the SCA. Applicant voted by absentee ballot in two Iranian presidential elections. He does not intend to do so in the future.

Applicant's wife is a dual citizen of the U.S. and Iran, holding passports from both countries. In addition, his mother and step-father are citizens and residents of Iran, as is a sibling. Applicant's mother-in-law and a sibling-in-law are also citizens and residents of Iran. Applicant contacts his mother weekly and his sibling about twice a month. In addition, Applicant's spouse contacts her mother once a week and her sibling once a month.

Iran and the U.S. have not had diplomatic relations since the hostage crisis of the early 1980s. Iran is vehemently anti-U.S. and anti-Israel. The country seeks nuclear weapons and other weapons of mass destruction and supports international terrorism. The U.S. has designated Iran as a state sponsor of terrorism, and, in 2009, the President continued an executive order declaring a state of national emergency with respect to Iran. Iran has a poor human rights record, and it has monitored the social activities of its citizens, entering homes and offices and monitoring telephone conversations and internet communications and opening mail without consent or authorization. Iran does not recognize dual citizenship. It considers Iranian-born, naturalized U.S. citizens, and their children, to be solely Iranian citizens. Such persons have been detained and harassed by Iranian authorities when traveling in that country.

In the Analysis, the Judge cleared Applicant of the Guideline C allegations. However, she concluded that Applicant's foreign relatives, and his contacts with them, raise security concerns under Guideline B. The Judge further concluded that Applicant had not met his burden of persuasion as to mitigation, citing the extent of his family connections in Iran and the frequency of his communications with his family. The Judge also noted Applicant's trips to Iran and his having

voted in Iranian elections, which she concluded bore upon the nature of his ties within that country. In the whole-person analysis, the Judge noted Applicant's having traveled on his Iranian passport one day after he had advised in his SCA that he had surrendered the document, which she characterized as self-serving and inconsistent with Applicant's U.S. citizenship and the fiduciary obligations of his interim clearance. All in all, the Judge concluded that Applicant had not met his burden of persuasion.

Applicant contends that the Judge erred in failing to mitigate the security concerns in his case. He argues that it is highly unlikely that he will be placed in a position of having to choose between his ties in Iran and the interests of the U.S. He notes, *inter alia*, that neither he nor his wife have been targeted by Iran, and he argues that there is no record evidence to establish a likelihood that his family could create an opportunity for foreign exploitation. He challenges the Judge's whole-person analysis on the grounds that, prior to having been awarded an interim clearance, he did not have a fiduciary relationship with the U.S. and that the Judge should not have relied upon the timing of his last trip to Iran in formulating her adverse decision.

We note, first of all, that an applicant with family members in a country that is hostile to the U.S. bears a "very heavy burden" to show that the family members are not a means of coercion or exploitation. *See, e.g.*, ISCR Case No. 06-17838 at 4 (App. Bd. Jan. 28, 2008). The presence of terrorist activity in a foreign country is a significant factor in Guideline B cases, as is the nature of the foreign country. *See, e.g.*, ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007); ISCR Case No. 08-03798 at 2 (App. Bd. Jan. 21, 2010) (Activities of Iranian government in monitoring private communications were relevant in evaluating the security significance of the applicant's Iranian relatives). 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. *See, e.g.*, ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005). Regarding Applicant's argument that neither he nor his wife have been targeted by Iran, we have previously held that such a circumstance does not "provide a meaningful measure" of whether an applicant's foreign relatives pose a security risk, when the relatives are subject to the authority of a regime that is hostile to the U.S. and has a poor human rights record. *See* ISCR Case No. 07-18283 at 4 (App. Bd. Apr. 24, 2009). The Government is not required to present direct evidence of a nexus between an applicant's circumstances and the Guideline B security concern. Neither is the Government required to prove that an applicant poses a clear and present danger to national security. *See, e.g.*, ISCR Case No. 09-05812 at 3 (App. Bd. Dec. 1, 2011).

Accordingly, Applicant's Iranian relatives; his travels to that country; his having voted in Iranian elections; the geopolitical situation of Iran, which includes support for terrorist activity and hostility to the U.S.; and the Judge's finding as to the timing of Applicant's last trip to Iran relative to the signing of his SCA support her adverse decision. On the question of the timing of the trip, Applicant's argument that, prior to actually having been awarded an interim security clearance, he did not have a fiduciary duty to the U.S., is not persuasive. A clearance adjudication is an applicant's opportunity to demonstrate that, prior to being awarded a clearance, he actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country. Clearance adjudications are common-sense decisions, which do not rely on overly technical interpretations of the Directive or of other policy. *See, e.g.*, ISCR Case No. 09-01793 at 3 (App. Bd. Sep. 28, 2010) (Applicant's overly technical reading of the Directive was not

persuasive).

The record supports a conclusion 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,’” both as to the mitigating conditions and the whole-person factors. *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 adverse decision is sustainable on this record. “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). See also Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

### **Order**

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

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

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