

KEYWORD: Guideline B

DIGEST: Directive ¶ E3.1.32.1 provides that the Appeal Board shall give deference to a Judge’s credibility determination. From our review of the record and the Judge’s sustainable findings about inconsistent statements, the Judge’s credibility determination is not undermined by sufficient contrary evidence to set aside that deference. To the extent that Applicant is raising an issue of due process, we note there is nothing in the record that would prompt a reasonable person to question Applicant’s ability to understand the proceedings or to represent himself. Moreover, we find nothing in the record that would persuade a reasonable person to conclude the Judge lacked impartially. There is no reason to conclude that Applicant was denied the due process afforded by the Directive. Adverse decision affirmed.

CASENO: 18-00852.a1

DATE: 05/15/2019

DATE: May 15, 2019

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In Re:)	
-----)	ISCR Case No. 18-00852
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 7, 2018, DoD 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 February 19, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge John Bayard Glendon denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant was born and raised in Taiwan and received a college degree there. He came to the United States to pursue graduate education. He received two master’s degrees in the late 1990s and then moved back to Taiwan for about three years. He married a Taiwanese woman. He returned to the United States to continue his education and was awarded a Ph.D. in the mid-2000s. Since then, he has remained in the United States and has worked for a number of U.S. companies. He has three children who were born in the United States. Applicant and his wife became U.S. citizens in 2016. Shortly before his security clearance hearing, he submitted a request to renounce his Taiwanese citizenship. His wife remains a dual citizen. He is unsure whether his children are dual citizens.

Applicant’s parents and sister are citizens and residents of Taiwan. His mother is a former teacher, and his father is a retired teacher. He speaks to his parents weekly. He testified that his father paid for his two master’s degrees. When asked if the Taiwanese or Chinese governments paid for any of his education, “[he] equivocally responded ‘No, I don’t think so.’” Decision at 3. When asked again, “he answered ‘No’ and then changed the subject to the low cost of education in Taiwan and other matters. Applicant’s responses and his demeanor at that point in the hearing suggested that he may not have been completely candid in answering questions about who paid his tuition and living expenses for four years of graduate education while he was studying for his two master’s degrees in the United States.” *Id.*

Applicant’s sister is employed at a public educational institution in Taiwan. In his security clearance application (SCA), he indicated that he communicates with her monthly; however, he testified his contact with her is much less. His wife’s parents and siblings are citizens and residents of Taiwan. She maintains a close relationship with her family. Her parents are retired. Her sister works in the financial industry, and her brother is a salesman.

Under the “One-China” policy, the United States recognizes China as the sole legal government over its territory, including Taiwan. The U.S. enjoys a positive unofficial relationship with Taiwan. The United States faces a serious threat to its national security from Chinese intelligence operations. China aggressively targets U.S. sensitive and protected information and Chinese actors are the world’s most active perpetrators of economic espionage. “China’s collection

activities include the use of Chinese nationals, such as students and researchers to act as procurement agents or intermediaries.” Decision at 5. Taiwan has also been an active collector of U.S. economic technologies that has sensitive military applications. Numerous cases have arisen involving the illegal export or attempted export of sensitive, dual-use technology to Taiwan.

The Judge’s Analysis

Applicant’s foreign contacts create a heightened risk of foreign exploitation and a potential conflict of interest between Applicant’s obligation to protect classified or sensitive information and his desire to help family members. His relationship with foreign persons is close, continuing, and presents serious security concerns. He presented evidence of limited ties to the United States. He became a U.S. citizen about five months before he applied for a security clearance. Applicant has renounced his Taiwanese citizenship, but such action does not outweigh the alleged security concerns. The Judge found for Applicant on an allegation involving three Taiwanese friends and against him on the allegations involving his Taiwanese family members.

Discussion

In noting that English is not his native language, Applicant states that he uses different ways to explain himself and provides as much background information as possible to make sure people understand him. He contends that the Judge used his manner of explaining matters as basis for concluding he was not candid in answering questions about who paid for his post-graduate education and for deducing that he tried to avoid answering questions on that subject. He argues that he was trying to provide “more information” so that the Judge would understand what he was saying and asserts that it was unfair for the Judge to use his manner of explaining himself against him. Appeal Brief at 1. Directive ¶ E3.1.32.1 provides that the Appeal Board shall give deference to a Judge’s credibility determination. From our review of the record and the Judge’s sustainable findings about inconsistent statements, the Judge’s credibility determination is not undermined by sufficient contrary evidence to set aside that deference. To the extent that Applicant is raising an issue of due process, we note there is nothing in the record that would prompt a reasonable person to question Applicant’s ability to understand the proceedings or to represent himself. Moreover, we find nothing in the record that would persuade a reasonable person to conclude the Judge lacked impartiality. There is no reason to conclude that Applicant was denied the due process afforded by the Directive.

Applicant also challenges the Judge’s conclusion that “[A]pplicant provided no documentary evidence or testimony of his other financial ties to the United States.” Appeal Brief at 1, quoting Decision at 5. He argues that, if requested, he could provide bank statements and other financial information to show he has strong financial ties to the United States. As provided in Directive ¶ E3.1.15, Applicant’s opportunity for presenting witnesses and other evidence to mitigate the alleged security concerns was during the hearing. Directive ¶ E3.1.29 provides that the Appeal Board cannot receive or consider new evidence on appeal.

Applicant further inquires as to what other evidence he could have presented to mitigate the alleged security concern. It is not appropriate for the Appeal Board to provide advice to applicants

about what evidence they could or should have presented at a hearing. *See, e.g.*, ADP Case No. 18-00329 at 3 (App. Bd. Dec. 14, 2018).¹

The balance of Applicant’s arguments amount to a challenge to the way in which the Judge weighed the evidence. Those arguments, however, are not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

Applicant has failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

¹ In his appeal brief, Applicant notes that he has not received a copy of the transcript but does not raise that omission as an appeal issue.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board