

KEYWORD: Guideline B

DIGEST: Applicant also contends that he possesses skills needed to support U.S. National interests. The Appeal Board, however, has previously noted an applicant's contributions to national security are not relevant or material in assessing his or her security eligibility. Adverse decision affirmed.

CASENO: 18-01966.a1

DATE: 11/01/2019

DATE: November 1, 2019

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In Re:)	
)	
-----)	ISCR Case No. 18-01966
)	
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 September 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 decision on the written record. On July 31, 2019, after considering the record, 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 SOR alleged the following:

- a. Your wife is a citizen of China; and her sister, also a citizen of China, is married to your oldest son.
- b. Your mother-in-law and father-in-law are citizens and residents of China; you provide financial support to your mother-in-law.
- c. You regularly use a Chinese online chat program to meet and communicate with citizens of China.

In responding to the SOR, Applicant denied the first two allegations and admitted the third.

The Judge’s Findings of Fact

Applicant has a complicated marital history. Applicant’s first wife was a U.S. citizen. They married in 1986, divorced in 1995, remarried in 1999, separated in 2000, and later divorced. They had three children.

In 2007 while working in China, Applicant began dating a woman who was a citizen and resident of China. His security officer issued him a cease and desist order that required him to terminate contact with the Chinese woman or risk losing his security clearance and job. He stopped seeing her until his contract ended. In 2008, they married. She entered the United State in 2009 and became a U.S. citizen in 2014. In 2010, they had a child who was born in the United States. In about 2012, Applicant’s second wife had a child with another man, but Applicant refers to this child as his own.¹ Applicant and his second wife divorced in August 2017.

¹ Applicant’s appeal brief reflects that he was ordered to pay support for this child because paternity was not contested within an allotted period.

Applicant's second wife's parents were citizens and residents of China. Starting in about 2008, he provided his then mother-in-law with monthly financial support, and she later spent part of each year living in his home in the United States. He stopped supporting her "years ago." Decision at 3. His former mother-in-law has become a U.S. permanent resident and is apparently no longer married. Applicant's son from his first marriage married his second wife's sister in 2016. Even after his divorce in 2017, Applicant's former sister-in-law is his daughter-in-law and his former mother-in-law is his son's mother-in-law. He claims he only talks to his second wife and her mother when contacting his children from that marriage.

In a background interview in 2017, Applicant disclosed that he met a Chinese woman over a Chinese-based online chat program and indicated that he was interested in having a relationship with the woman. At that time, he did not know anything about her employment status or her relationship with the Chinese government. After submitting his security clearance application and undergoing his background interviews, Applicant married the Chinese woman who had worked as a general manager of a Chinese company. She has an adult child who is a student in China. The date of Applicant's latest marriage does not appear in the record. Applicant and his wife reside together at a location in Africa. He is sponsoring her for U.S. resident status. Limited details are known about her. Applicant's latest marriage is not alleged in the SOR. Department Counsel did not amend the SOR to address this new marriage, although she noted this marriage is relevant to the third SOR allegation listed above and to the issue of mitigation. (We note that the Judge also could have amended the SOR on his own motion to "render it in conformity with the evidence" and given the parties appropriate opportunity to respond. See Directive ¶ E3.1.17.)

Applicant submitted a number of reference letters that reflect he is trustworthy. His response to Department Counsel's file of relevant material (FORM) asserts that neither his current wife nor his second wife are affiliated with the Chinese Government, that neither of them could be exploited, and that he would report any "hypothetical scenario" to security officials. Decision at 4, citing FORM response at 22-26.

China is an authoritarian state that actively engages in intelligence gathering. It targets U.S. information and technology. Its intelligence services and private companies seek to exploit Chinese citizens or persons with ties to China who can steal protected information. Its intelligence services also routinely monitor communications, including those transmitted over the Internet. It has a poor human rights record.

The Judge's Analysis

Although Applicant was put on notice in 2007 that his relationship with a Chinese national presented an unacceptable security risk, he later married her and, following their divorce, married another Chinese national. His relationships with his second wife, her mother, and her sister are ongoing because of his children from that marriage. He also maintains a relationship with his second wife's sister through her marriage to his son. Additionally, he married a woman he met through a Chinese website. Given China's intelligence operations and human rights record, Applicant has not

established that it is unlikely he would be placed in a position of having to choose between the interests of his foreign contacts and those of the United States.

The evidence does not demonstrate that Applicant's sense of obligation to his second wife, her mother, and her sister are minimal. Applicant's use of a Chinese online chat program to search for a new wife also undercuts his mitigation evidence. Applicant worked overseas for the last 15 years. Based on the evidence presented, it cannot be concluded that there is no conflict of interest because of the Applicant's deep and longstanding relationships and loyalties in the United States.

Applicant's contact with his second wife's father does not create a risk of foreign influence because it is casual and infrequent. The same cannot be said regarding his relationship with his second wife, her mother, and her sister. He has not shown that his relationship with his current wife and her family creates little likelihood of risk for foreign influence. He also maintains a close relationship with his third wife's child in China. The Judge found against Applicant on the three SOR allegations.

Discussion

Applicant's appeal brief contains information that is not in the record. Such information includes his accounts of discussions with security officers. We cannot consider new evidence on appeal. Directive ¶ E3.1.29. Applicant also contends that he possesses skills needed to support U.S. national interests. The Appeal Board, however, has previously noted an applicant's contributions to national security are not relevant or material in assessing his or her security eligibility. *See, e.g.*, ISCR Case No. 15-05820 at 2 (App. Bd. Jun. 24, 2019).

The balance of Applicant's arguments are in essence a challenge to the manner in which the Judge weighed the evidence. For example, he argues that he has very little or no contact with his second wife or her family beyond logistical or trivial family matters, that he has strong ties to family member in the United States, and that he works outside the United States only for the purpose of supporting his family back home. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. 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. 15-00650 at 2 (App. Bd. Jun. 27, 2016).

Applicant has failed to establish that the Judge committed 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."

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