



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: February 9, 2026

_____)
 In the matter of:)
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)
 Applicant for Security Clearance)
 _____)

ISCR Case No. 22-02603

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Brittany White, Esq., Department Counsel
 Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Grant Couch, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 28, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline B (Foreign Influence) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On December 2, 2025, Defense Office of Hearings and Appeals Administrative Judge Richard A. Cefola granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant maintains certain ties within Taiwan, including that his mother and father are resident citizens; that his sister is a dual citizen of the United States and Taiwan and resides in Taiwan; and that during his subject interview he indicated that his association with his parents creates a potential conflict of interest between his desire to protect information and to help them. Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. He denied SOR ¶ 1.c.

Background

Applicant, in his mid-20s, is a native-born American, but also a dual national with Taiwan. His family moved to Taiwan when he was a toddler, and he was raised there. He returned to the United States in 2018 to attend college. Transcript (Tr.) at 28. He was admitted into a graduate school program in 2022. Applicant Exhibit (AE) F. From June to September 2022, he interned with a U.S. defense contractor. He submitted his security clearance application (SCA) in connection with that employment. He earned a master's degree in 2023. He was rehired by the same defense contractor in February 2024. Applicant is not married and has no children. Tr. at 15.

Applicant has returned to Taiwan on multiple occasions since 2018, to include the summer between his freshman and sophomore years of college, from March 2020 to March 2021 (because the college's dormitories were closed during COVID), and from August 2023 to December 2023 to perform military service. Because Taiwan has compulsory military service requirements for all adult male citizens — a constitutional duty in Taiwan — he was required to complete military service from August 2023 to December 2023. Tr. at 20. He has a bank account in Taiwan with about \$300 in it. Tr. at 22.

Applicant has investments in his employer's savings plan valued at about \$660. AE E. In 2024, his net pay was about \$73,000. He pays taxes in the United States and is registered to vote. AE S. Applicant's letters of recommendation and performance evaluations reflect he is a valued friend and employee.

Guideline B - Foreign Influence

Applicant's mother and father are in their mid-50s and are citizens and residents of Taiwan. Both of his parents are retired and have no connections with any foreign government. Applicant's father worked for an electronics company, and his mother has been "a housewife for her entire life." Tr. at 27. He speaks with his mother once a week and his father once a month. He last visited them in July 2025 to help them move to a new apartment. *Id.* at 17.

Applicant's sister is a native-born American, but also a dual national with Taiwan. She no longer resides in Taiwan, having moved to the United States in 2023. She works as a product designer in New York City. Applicant contacts his sister "once or twice a week." *Id.* at 24.

Applicant denies stating that his parents create a potential conflict of interest between his obligation to protect sensitive information and his desire to help them. He avers that this was the investigator's opinion recorded in the report of investigation, and Applicant did not "know if . . . [he had] the right to fix the Investigator's opinion" when he adopted the subject interview in the answer to interrogatories. *Id.* at 32.

Notice

The Judge took administrative notice of the following facts:

As to Taiwan, the United States has a long-standing one-China policy: the United States does not support Taiwan independence, but expects their differences to be resolved by peaceful means. There have been multiple cases involving illegal export, or attempted illegal export, of U.S. restricted, dual-use, or military technology to Taiwan by Taiwanese nationals or companies.

As to the People's Republic of China (PRC), the PRC will likely continue posturing to be in a position of advantage in a potential conflict with the United States. China presents the most comprehensive and robust military threat to U.S. national security. The PRC remains the most active and persistent cyber threat to the U.S. government, private sector, and critical infrastructure networks.

Decision at 3.

Scope of Review

On appeal, the Board does not review a case *de novo*, but rather addresses material issues raised by the parties to determine whether there is factual or legal error. When a judge's factual findings are challenged, the Board must determine whether the "findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

When a judge's ruling or conclusions are challenged, we must determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. A judge's decision can be arbitrary or capricious if: 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* ISCR Case No. 95-0600, 1996 WL 480993 at *3 (App. Bd. May. 16, 1996) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In deciding whether a judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. *See* ISCR Case No. 03-22861 at 2 (App. Bd. Jun. 2, 2006).

When an appeal issue raises a question of law, the Board's scope of review is plenary. *See* DISCR OSD Case No. 87-2107, 1992 WL 388439 at *3-4 (App. Bd. Sep. 29, 1992) (citations to federal cases omitted). If an appealing party demonstrates factual or legal error, then the Board must consider the following questions: (1) Is the error harmful or harmless?; (2) Has the nonappealing party made a persuasive argument for how the judge's decision can be affirmed on alternate grounds?; and (3) If the judge's decision cannot be affirmed, should the case be reversed or remanded? *See* ISCR Case No. 02-08032 at 2 (App. Bd. May. 14, 2004).

Discussion

On appeal, the Government argues that the Judge's application of the Guideline B mitigating conditions and analysis under the Whole-Person Concept were arbitrary, capricious, and not supported by the record evidence. We agree.

The entirety of the Judge's mitigation analysis under Guideline B is as follows:

Applicant's parents are both retired. Neither parent have, nor had any connection with the Taiwanese government. His contacts with them are casual and infrequent. Foreign Influence is found for Applicant.

Decision at 6. Similarly, the Judge's analysis under the Whole-Person Concept concludes:

Applicant has a distinguished history of working in the defense industry and is respected by those who know him in his community and in the workplace. He is a native-born American, living and working in the United States. He can be expected to resolve any conflict of interest in favor of the United States.

Decision at 7 (internal citations omitted).

Judges have broad latitude and discretion in how to write their decisions, provided they issue a written decision that allows the parties and the Board to discern what the judge is finding and concluding, and how the judge is analyzing the case. ISCR Case No. 98-0809 at 1-2 (App. Bd. Aug. 19, 1999). A judge must consider pertinent factors and the Adjudicative Guidelines and must articulate a rational explanation for any deviations from them. *Id.* The Judge did not do so here. Further, under the Whole-Person Concept, a judge must assess the totality of an applicant's conduct and circumstances in order to evaluate the applicant's security eligibility, not just consider an applicant's conduct and circumstances in a piecemeal manner. ISCR Case No. 99-0601 at 8 (App. Bd. Jan 30, 2001). Here, the Judge erred in his failure to articulate a rational explanation for his application of the mitigating conditions and in his incomplete Whole-Person analysis. As a result, his decision is unsustainable.

Applicant has the ultimate burden, once the Government has established a prima facie case against him, of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 2 (App. Bd. Dec. 19, 2002). Our examination of the record shows that Applicant failed to meet his burden to support application of AG ¶¶ 8(a), 8(b), and 8(c), despite the Judge's conclusions to the contrary.

The Government argues that, in applying the mitigating conditions, the Judge failed to consider the nature of the foreign government involved, including its intelligence gathering history, as required. *See* ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007). The Board has previously held that an accurate and current assessment of the geopolitical situation in the country is crucial to the analysis of AG ¶¶ 8(a) and 8(b). *See* ISCR Case No. 07-14508 at 4 (App. Bd. Oct. 22, 2008). While the Judge briefly summarized the lengthy Administrative Notice submissions in his discussion of the facts, the decision is otherwise silent to the security significance of

Applicant's parents' citizenship and residence in Taiwan, or how the heightened risk required for application of the disqualifying conditions is addressed by the mitigating conditions. The Judge highlights that Applicant's parents are retired and have no connection to the Taiwanese government, but he does not explain why those facts alone — in light of the entire record — mean that it is unlikely that Applicant will be placed in a position of having to choose between his relationships with his Taiwanese parents and the interests of the U.S.; or that Applicant would resolve any conflict of interest in favor of the U.S.

The Board has consistently held that factors such as an applicant's relatives' obscurity does not provide a meaningful measure of whether an applicant's circumstances pose a security risk. *See* ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009). Rather, it is the nature of the foreign ties themselves that give rise to a security concern. The close nature of Applicant's relationship with his parents is reflected in his regular communication with them and his in-person visits. Additionally, Applicant's decision to complete his compulsory military service in 2023 inherently placed him in the midst of the complex geopolitical friction between Taiwan's self-defense needs and the strategic interests of the United States in the region. Accordingly, we are persuaded that the Judge underestimated Applicant's relationship with his parents, Taiwan, and the geopolitical threat posed to the U.S. As a result, AG ¶¶ 8(a) and 8(b) do not mitigate the Government's concern.

Further, under AG ¶ 8(b), the Judge failed to explain why he found there was no conflict of interest. Applicant's contacts with his parents are not "so minimal," nor did the Judge analyze Applicant's "deep and longstanding relationships and loyalties in the United States," to demonstrate why he believed that Applicant would resolve any conflict of interest in favor of the U.S. interest. The record does not support either conclusion. Weekly calls to his mother and monthly calls with his father exceed "minimal contacts" and Applicant failed to show significant deep and longstanding relationships in the United States. Instead, the record shows few assets in either country, a sister in the United States, and parents in Taiwan. The Judge failed to support his application of AG ¶ 8(b).

The Government next challenges application of AG ¶ 8(c), arguing that the Judge's scant explanation for applying the condition failed to address "the extent of Applicant's communications with his family members." Appeal Brief at 18. "There is a rebuttable presumption that an applicant's contacts with immediate family members are not casual. Furthermore, in assessing an applicant's contacts with foreign citizens, an Administrative Judge must consider the totality of those contacts, and not engage in a piecemeal evaluation of such contacts." ISCR Case No. 02-24267 at 4 (App. Bd. May 24, 2005).

The Judge credited Applicant with mitigation under AG ¶ 8(c) because Applicant's contacts with his parents "are casual and infrequent." Decision at 6. As noted above, Applicant did not meet his burden to establish his relationship with his parents was casual. Further, given the Judge's own findings about Applicant's contacts with his parents in Taiwan, it was arbitrary and capricious for the Judge to conclude those contacts were infrequent. The Judge's decision to apply AG ¶ 8(c) is arbitrary and capricious because it is not consistent with the plain language of the mitigating condition and it runs contrary to the Judge's own finding about Applicant's contacts with his parents in Taiwan. We find no rational basis for the Judge's application of AG ¶ 8(c).

In summary, the Judge erred in finding that Applicant met his burden to establish that it is unlikely he will be placed in a position of having to choose between the interests of his parents and the interests of the United States, or that Applicant's sense of loyalty or obligation to his parents is so minimal, or that Applicant has such deep and longstanding relationships and loyalties in the United States, that he can be expected to resolve any conflict of interest in favor of the U.S. interest. The Judge erred in his application of AG ¶¶ 8(a), 8(b), and 8(c).

The Government has met its burden on appeal of demonstrating reversible error below. Considering the record as a whole, the Judge's decision is arbitrary and capricious as it fails to examine relevant evidence and important aspects of the case, fails to articulate a satisfactory explanation for material conclusions, and runs contrary to the weight of the record evidence. Accordingly, the Judge's favorable decision is not sustainable under *Egan*.

When the Board finds that a judge's decision is unsustainable, we must determine if the appropriate remedy is remand or reversal. The former is appropriate when the legal errors can be corrected through remand *and* there is a significant chance of reaching a different result upon correction, such as when a judge fails to consider relevant and material evidence. If the identified errors cannot be remedied on remand, the decision must be reversed. Such is the case when, after addressing the identified error, the Board concludes that a contrary formal finding or overall grant or denial of security clearance eligibility is the clear outcome based on the record." ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2024) (citation omitted).

After addressing the identified errors, the Board concludes that a denial of national security eligibility is the clear outcome based on the record. The Judge's favorable decision is reversed.

Conclusion

Applicant's conduct and character are not an issue in this case. Rather, his circumstances create the security concerns because commonsense suggests that even those whose character is unimpeachable could be faced with situations that would seriously tempt them to place the safety of loved ones ahead of other competing interests.

That said, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). The standard applicable in national security decisions is that eligibility may be granted only when "clearly consistent with the interests of the national security." *Egan*, 484 U.S. at 528. "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

Order

The decision in ISCR Case No. 22-02603 is **REVERSED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board