

KEYWORD: Guideline C; Guideline B

DIGEST: A Judge is presumed to have considered all of the evidence. Applicant failed to rebut that presumption. Adverse decision affirmed.

CASE NO: 10-06824.a1

DATE: 04/09/2011

DATE: April 9, 2012

In Re:	)	
	)	
-----	)	ISCR Case No. 10-06824
	)	
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 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 decision on the written record. On January 20, 2012, after considering the record, Administrative Judge Joan Caton Anthony 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 considered all of the record evidence and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant was born and raised in Taiwan. She came to the U.S. in the mid-1980s to join her husband, a Taiwanese citizen, and to pursue graduate study. She and her husband had a child while in the United States. She earned a Master's degree here and, in the mid-1990s, she and her husband became U.S. citizens. She obtained a U.S. passport in 2007, and she applied for, and was issued, a Taiwanese passport the following year. In completing her security clearance application (SCA), Applicant identified herself as a dual citizen of Taiwan and the United States. She has given the Taiwanese passport to her security officer, but she stated to a security clearance interviewer that she wished to retain it to facilitate travel to Taiwan. She also told the investigator that she would be able to retire in six years and may return to live in Taiwan. Although she and her husband had not decided to do that, she did not want to foreclose the option.

Her mother is a citizen and resident of Taiwan, and Applicant speaks with her once a month on the telephone. Applicant visits her mother about once a year. She has four siblings who are citizens and residents of Taiwan. She telephones two of them twice a month, one every two months, and she visits her siblings once a year.

Taiwan has been involved in criminal espionage and export controls enforcement cases. In a report dating from the year 2000, Taiwan was identified as an active collector of U.S. economic and proprietary information. The People's Republic of China's Ministry of State Security maintains intelligence operations in Taiwan.

In the Analysis, the Judge noted evidence suggesting ambivalence concerning her dual citizenship and her acquisition and use of a Taiwanese passport after becoming a U.S. citizen. She also discussed what she characterized as Applicant's long-standing obligations to family members in Taiwan and her frequent communications with several of them. When viewed in light of Taiwan's status as a collector of U.S. proprietary information and the presence of Chinese intelligence personnel there, she concluded that Applicant could be vulnerable to foreign exploitation, inducement, pressure, or coercion.

In her appeal brief, Applicant cites to record evidence concerning her family circumstances, her use of her passport, etc. To the extent that she is arguing that the Judge either failed to consider this evidence or that she mis-weighed it, we note that a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-10068 at 2 (App. Bd. Dec. 20, 2011). The Judge's findings and her discussion of those findings do not support Applicant's contention on appeal. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has she demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision. See ISCR Case No. 06-24420 (App. Bd. Feb. 5, 2008). 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: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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