

KEYWORD: Guideline B; Guideline C

DIGEST: On appeal Applicant submitted evidence that was not part of record before the Judge. We cannot consider new evidence on appeal. Adverse decision affirmed.

CASENO: 12-05359.a1

DATE: 06/07/2013

DATE: June 7, 2013

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**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 12, 2012, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C

(Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 22, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 failed properly to weigh the evidence and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline C are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact:**

The Judge made the following findings pertinent to the issues on appeal: Applicant is a U.S. citizen by birth. He first obtained a security clearance in 1979.

Applicant married his wife, a Taiwanese citizen born in that country, in the early 2000s. She teaches at a university there. During her career, she has received monetary grants from the Taiwanese government. When she became pregnant, she attempted to enter the U.S. in order to have the child in this country. However, she could not do so because of a problem with her visa. The child was born in Taiwan. Applicant worked in that country for a period of time, receiving a residency card. He did not renew the card when it expired in the mid-2000s.

Applicant's wife is not a U.S. citizen and has not applied for U.S. citizenship. She has a successful career at the university in Taiwan. Applicant has met several faculty members from the same university. He also met members of the Taiwanese Air Force whom his wife had invited to dinner at their house.

Applicant's son lives with his mother in Taiwan. The two return to the U.S. during school breaks, staying with Applicant. In his answer to the SOR, Applicant stated that his son lived with him in the U.S. and had no intention of returning to Taiwan. The Judge stated that this was not consistent with the facts presented at the hearing.

Applicant's wife inherited property from her father in Taiwan. His wife has property valued at about \$1,000,000. She also has a bank account in Taiwan. His son has a home in his name given to him by his grandmother. There is also a possibility that the wife owns farmland in Taiwan.

In late 2012 Applicant filed for a divorce. His wife stated in an affidavit that she had made no decision regarding the divorce. At the close of the record the couple was still married. Applicant stated that he was not sure what would occur and that he was ambivalent.

Taiwan is a multi-party democracy with significant economic ties to the U.S. Taiwan's foremost defense goal is to prevent an invasion by China. That country maintains intelligence operations in Taiwan, utilizing Chinese nationals with Taiwanese connections. In a 10-year-old report, Taiwan was identified as an active collector of U.S. economic intelligence. There have been

several cases recently of illegal export of restricted U.S. technology to Taiwan. There is also evidence that Taiwan has specifically targeted U.S. citizens in the last five to seven years to obtain protected or classified information.

### **The Judge's Analysis**

Though noting that no intelligence operatives appear to have targeted Applicant or his family, the Judge concluded that such an event could not be ruled out. Accordingly, she concluded that Applicant's family circumstances raised a real possibility that Applicant could be presented with a conflict of interest between his family and his duty to protect classified information. She also cited to evidence that Applicant cares for the welfare of his wife and son. She concluded that Applicant's ties in and to Taiwan, viewed in their totality, raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. *See* Directive, Enclosure 2 ¶ 7(a). Moreover, the Judge concluded that Applicant had failed to meet his burden of persuasion as to mitigation. Given the closeness of his relationships in Taiwan—a wife and a son—Applicant did not demonstrate that he could be expected to resolve any conflict of interest in favor of the U.S. In the whole-person analysis, the Judge stated that Applicant “vacillated on a number of points,” which detracted from his credibility. Decision at 11.

### **Discussion**

Applicant challenged the Judge's opinion that his testimony had been vacillating. We have examined the record as a whole and conclude that the opinion is consistent with the evidence that was before the Judge. For example, although Applicant filed for a divorce, he also testified that he was not sure that they would go through with it. He testified that he filed in order to force his wife to a decision regarding their living together, “either in Taiwan or USA.” Tr. at 71. We also note the Judge's findings, referenced above, concerning inconsistent statements by Applicant regarding the living arrangements for his son. We are required to defer to a Judge's credibility determination. *See, e.g.*, ISCR Case No. 11-09172 at 2 (App. Bd. Mar. 19, 2013), quoting Directive ¶ E3.1.32.1. We find no reason to disturb the Judge's evaluation of Applicant's credibility.

Despite Applicant's argument that the Judge's findings contain errors, her material findings are supported by substantial evidence or constitute reasonable inferences from the evidence. *See, e.g.*, ISCR Case No. 11-10633 at 3 (App. Bd. Mar. 21, 2013). In support of his appeal, Applicant has submitted evidence from outside the record. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Applicant argues that the Judge did not properly weigh evidence favorable to him, such as the contributions he has made to national security during the course of his career. However, considering the evidence as a whole, we find no reason to conclude that the Judge weighed the evidence in an arbitrary or capricious manner. Neither has Applicant rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-08550 at 4 (App. Bd. Mar. 20, 2012).

Applicant argues that his circumstances do not raise security concerns. However, the “heightened risk” language of the Directive addresses Applicant’s contacts with a country, not necessarily the country itself. *See, e.g.*, ISCR Case No. 08-09211 at 3-4 (App. Bd. Jan. 21, 2010). In any event, the presence of close relatives, including an offspring, living in a country that seeks U.S. protected information, and in which China conducts intelligence activity, are sufficient to raise security concerns under Guideline B.

The Judge examined the relevant data 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, 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 Decision is **AFFIRMED**.

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