

KEYWORD: Guideline B; Guideline C

DIGEST: Applicant was on notice of the burden on him to provide information to support his case in mitigation. Adverse decision affirmed.

CASENO: 14-02632.a1

DATE: 08/28/2015

DATE: August 28, 2015

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In Re:)	
)	
-----)	ISCR Case No. 14-02632
)	
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 August 4, 2014, DoD 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 June 25, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 he was denied due process and 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 works for a Government contractor. Born in Taiwan to Taiwanese parents, he came to the U.S. in the early 1980s and became a naturalized citizen ten years later. He received a security clearance in 2004. Applicant possesses a U.S. passport. He also obtained a Taiwanese passport in the mid-2000s. He used it to travel to Taiwan three times since 2007. He claimed that he used both his U.S. and Taiwanese passports and that customs officials stamped both of them. He also stated that he had destroyed his Taiwanese passport, although he provided no corroboration.

Applicant submitted no information about any financial or property interests in Taiwan. He has relatives living in that country, including a grandmother and other family members. He provided no information about them, for example whether they had any connections with the military, worked for the Taiwanese government, etc. He also provided little information about the extent of his contacts with them.

Taiwan is a multi-party democracy and has the 21st largest economy in the world. It is also one of the most active collectors of U.S. economic and proprietary information. Since 2000, the country has been repeatedly involved in criminal espionage and export control violations of U.S. technology with military applications. Private sector acquisitions have resulted in foreign governments obtaining U.S. technology.

The Judge's Analysis

The Judge relied in large part upon a paucity of mitigating evidence. He stated that Applicant had provided nothing regarding the nature and extent of his contacts with his foreign relatives or the extent of any property holdings he may have in Taiwan. He also noted evidence that Applicant had exercised a prerogative of Taiwanese citizenship by obtaining and using a passport from that country. He concluded that Applicant had not succeeded in mitigating the security concerns in his case.

Discussion

Applicant stated that he had not been told that he needed to provide corroboration for his claims to have destroyed his Taiwanese passport and to have used his U.S. passport. The Directive states that an applicant who chooses a decision on the written record has 30 days in which to submit

written objections, rebuttal, extenuation, mitigation, or explanations of the evidence included in the File of Relevant Material (FORM). Directive ¶ E3.1.7. It also describes various conditions that could mitigate security concerns, including those raised in this case. Directive, Enclosure 2 ¶¶ 8 and 11. Applicant was provided a copy of the Directive. Both the FORM and the cover letter accompanying it clearly explained Applicant’s right to provide evidence. Moreover, the FORM explicitly stated that Applicant had provided no evidence in mitigation or extenuation, including no evidence corroborating his claim to have destroyed his passport. Applicant received notice sufficient to have apprised him of the kind of things that can mitigate security concerns, as well of his right to present evidence in his own behalf. Despite this notice, Applicant did not respond to the FORM. We find no reason to conclude that Applicant was denied his due process rights.

Applicant’s brief cites to matters not contained in the record, which we cannot consider. Directive ¶ E3.1.29. Applicant cites to some Hearing Office decisions that, he contends, are similar to his and in which the applicants received clearances. We give these cases due consideration as persuasive authority. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Board. *See, e.g.*, ISCR Case No. 11-14723 at 3 (App. Bd. Oct. 3, 2014). In none of the decisions that Applicant has cited do the Judges reference a paucity of mitigating evidence, as is the case here. These decisions do not demonstrate that the Judge’s overall decision was erroneous.

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: Michael Ra’anan
Michael Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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