

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant’s appeal raises the issue of whether documents she submitted were included in the record. Adverse decision remanded.

CASENO: 14-05412,a1

DATE: 10/15/2015

DATE: October 15, 2015

In Re:)	
)	
-----)	ADP Case No. 14-05412
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On January 27, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness 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 September 16, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe denied Applicant's request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether she had been denied due process in that she submitted documents that were not included in the record. Consistent with the following, we remand the case to the Judge.

In their respective briefs, both Applicant and Department Counsel assert matters from outside the record regarding Applicant's response to the File of Relevant Material (FORM). Department Counsel states that Applicant submitted matters to DOHA that, through administrative oversight, were not presented to the Judge. As a general matter, we cannot consider new evidence on appeal. Directive ¶ E3.1.29. However, we have considered new evidence that bears upon threshold issues of jurisdiction or due process. *See, e.g.*, ISCR Case No. 12-01038 at 1-2 (App. Bd. Mar. 22, 2013). Department Counsel recommends that we remand the case to the Judge for further processing. We agree with this recommendation.

Order

The Decision is **REMANDED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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