

Applicant raised the following issues on appeal: whether the Judge considered matters that were not raised in the SOR 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 was born in Taiwan. He came to the U.S. as a child and became a naturalized citizen upon reaching his majority, in the mid-1980s. He received undergraduate and graduate degrees from U.S. universities. Applicant's wife was born in Taiwan and is a naturalized citizen of the U.S. His in-laws are citizens and residents of Taiwan. Applicant's wife maintains weekly contact with her parents. The couple traveled to Taiwan four times between 2010 and 2014.

In his Response to the SOR, Applicant stated that, in completing a prior security clearance application (SCA) in 2003, he had disclosed his possession of a Taiwanese passport that had been issued in 1996. In fact, Applicant did not disclose this passport in the 2003 SCA. Applicant claims that he did not intentionally provide false information. He stated that he did not disclose the passport because he did not use it. He did disclose the passport on his 2014 SCA. Applicant renewed his Taiwanese passport in order to facilitate trips to Taiwan. He stated that he did so in order to avoid possible mistaken identity.

Taiwan has a strong relationship with the U.S. That country has an interest in information from the U.S. that would aid in its defense. The Peoples Republic of China maintains intelligence operations in Taiwan. In addition, Taiwan itself has a history of espionage against the U.S.

The Judge's Analysis

The Judge cited to evidence that Taiwan engages in espionage against the U.S. in an effort to obtain economic and proprietary information. Moreover, she stated that there is evidence that Taiwan's intelligence bureau "specifically targets U.S. citizens with connections to Taiwan." Decision at 6. She stated that Applicant's evidence was not enough to mitigate concerns arising from his Taiwanese in-laws. She also noted evidence that Applicant has held a Taiwanese passport and has used it to enter that country several times recently. He provided no evidence that his use of the foreign passport was approved by an appropriate security authority. Moreover, Applicant continues to possess the Taiwanese passport. She concluded that Applicant had not mitigated the concerns alleged under Guideline B or C.

In the whole-person analysis, the Judge cited to evidence that Applicant had not disclosed his foreign passport when completing the 2003 SCA. She noted that non-alleged conduct may not serve as an independent basis for denying a clearance. However, she stated that such conduct may be considered for things such as evaluating an applicant's credibility, his case for mitigation, or for performing a whole-person analysis. She stated that Applicant's omission called his credibility into question. Noting Applicant's contention that he had not knowingly or willfully provided false information, she stated that his age and educational level at the time undermined that argument.

Discussion

Applicant challenges the Judge's treatment of the non-alleged SCA omission. He contends that the Judge erred in finding that it was deliberate. Prior to the closure of the record, the Judge queried both parties about Applicant's contention that he had disclosed his Taiwanese passport in 2003. She gave them an opportunity to provide information about the prior clearance and whether Applicant had received approval for his possession of a foreign passport at the time the clearance was approved. In response, Department Counsel submitted a supplement to the File of Relevant Material (FORM). This supplement included a copy of the 2003 SCA, in which Applicant denied that he had a foreign passport. The Judge gave Applicant an opportunity to respond to this supplement. Decision at 3. He provided a response, which the Judge included in the record. As stated above, the Judge considered the non-alleged omission on the questions of credibility, mitigation, and the whole-person, which was permissible. *See, e.g.*, ISCR Case No. 14-00151 at 3, Note 1 (App. Bd. Sept. 12, 2014).

Under the circumstances, we find no error in the Judge's consideration of Applicant's omission. Although Applicant challenges her finding that it was deliberate, we conclude that it was consistent with the record that was before her. Moreover, we have considered the totality of Applicant's appeal arguments and conclude that they consist principally of a disagreement with the Judge's weighing of the evidence, which is not enough to demonstrate error. 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board