

DATE: July 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24752

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 18, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 23, 2006, after the hearing, Administrative Judge Michael H. Leonard denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Administrative Judge's unfavorable clearance decision under Guideline B is arbitrary, capricious or contrary to law.

Applicant contends that the Administrative Judge's unfavorable clearance decision should be reversed because it is Applicant's wife's family members, not his family members, that are citizens and residents of the People's Republic of China (PRC). Applicant also argues that his evidence was sufficient, as a matter of law, to demonstrate that his wife's family members were not in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to them and the United States. ⁽¹⁾ The Board does not find Applicant's arguments persuasive.

The Applicant had the burden of presenting evidence to rebut, explain, extenuate or mitigate facts that the Department Counsel proved or that Applicant admitted regarding his family ties to the PRC, and the Applicant also had the ultimate burden of persuasion as to obtaining a favorable security clearance decision. Directive ¶ E3.1.15. The Administrative Judge had to consider the record evidence as a whole, both favorable and unfavorable, evaluate the facts and circumstances of Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide whether Applicant had met his burden of persuasion under Directive ¶ Item E3.1.15.

The fact that Applicant's explanations and his mitigating evidence did not lead the Administrative Judge to the decision desired by Applicant does not establish error. The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. An applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

A review of the Administrative Judge's decision indicates that the Judge weighed the mitigating evidence offered by Applicant against the

seriousness of the disqualifying circumstances, and considered the possible application of relevant mitigating conditions and factors. The Judge articulated a rational basis for not favorably applying any mitigating conditions or factors and reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. Foreign connections not based on birth can raise security concerns under Guideline B. Therefore, the Judge's decision is not rendered arbitrary, capricious, or contrary to law because Applicant's relationships with PRC citizens are based on his marriage. *See, e.g.*, ISCR Case No. 02-00305 at 4 (App. Bd. Feb. 12, 2003). Whether Applicant's wife is eligible or not eligible to apply for U.S. citizenship now or in the future does not change the fact that she is now a PRC citizen and not a U.S. citizen, and does not change the security significance of those facts for purposes of adjudicating Applicant's current security eligibility. Even if Applicant's wife were to become a naturalized U.S. citizen in the future, such a circumstance does not render the Judge's decision arbitrary, capricious, or contrary to law, considering Applicant's ties to his wife's immediate family members who are citizens and residents of the PRC. *See, e.g.*, ISCR Case No. 02-30535 at 3-4 (App. Bd. May 4, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guideline B is sustainable.

Finally, Applicant cites several decisions by Hearing Office Administrative Judges in other cases, arguing that the favorable results in those cases constitute a reason for reversing the Administrative Judge's unfavorable decision in his case. A decision by a Hearing Office Judge is not legally binding precedent on other Hearing Office Judges or the Board. *See, e.g.*, ISCR Case No. 01-22606 at 3-5 (App. Bd. June 30, 2003). Accordingly, Applicant's ability to cite Hearing Office decisions in other cases that appear to support his position does not demonstrate the Judge's decision in this case is arbitrary, capricious, or contrary to law. Furthermore, the Board has no obligation to follow the Hearing Office decisions cited by Applicant, and no obligation to reconcile the Judge's decision below with the Hearing Office decisions cited by Applicant.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. Directive ¶ E2.A2.1.3.1.