

DATE: July 5, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06501

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Robert R. Sparks, Jr., Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 6, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline B (Foreign Influence), pursuant to Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 27, 2005, after the hearing, Administrative Judge Shari Dam denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. [\(1\)](#)

Applicant raised the following issues on appeal: whether the Administrative Judge erred in making an adverse finding under SOR paragraph 1.b.; whether the Administrative Judge's unfavorable clearance decision is arbitrary, capricious or contrary to law.

Applicant argues that the Administrative Judge erred in making an adverse finding under SOR paragraph 1.b, because the finding is contrary to the record evidence and the Judge's own finding of fact. The Board finds Applicant's argument persuasive.

The Administrative Judge found that the brother referred to in SOR paragraph 1.b had died in November 2004 at the age of 74. Decision at 4. Because that brother is deceased, he no longer presents any security concern for the Applicant. Accordingly, the Applicant has established error, but the error is harmless because it would not change the outcome of the case.

Applicant also argues that the Administrative Judge's decision should be reversed because her application of Guideline B Mitigating Conditions 1 [\(2\)](#) and 3, [\(3\)](#) and the whole person factors [\(4\)](#) is not sustainable. The Board does not find this argument persuasive.

Given the record in this case, the Administrative Judge's application of Guideline B Mitigating Conditions 1 and 3 was sustainable. Moreover, the Judge made extensive findings of fact which indicate that she evaluated the totality of Applicant's circumstances in reaching her decision. The Judge weighed the mitigating evidence offered by Applicant against the seriousness of the security concerns presented by Applicant's circumstances and reasonably explained why that evidence was insufficient to overcome those concerns. Therefore, the Judge's whole person analysis is also

sustainable.

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 Michael D. Hipple

Michael D. Hipple

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. The Administrative Judge found in favor of the Applicant under SOR paragraph 1.c. That favorable is not at issue on appeal.
2. Directive ¶ E2.A2.1.3.1 ("A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brother, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States").
3. Directive ¶ E2.A2.1.3.3 ("Contact and correspondence with foreign citizens are casual and infrequent").
4. Directive ¶ E2.2.1.1 through E2.2.1.9.