

DATE: November 24, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-00609

## 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 September 27, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 26, 2006, after the hearing, Administrative Judge Darlene Lokey Anderson 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 adverse security clearance decision under Guidelines B is arbitrary, capricious or contrary to law. [\(1\)](#)

Applicant contends that the Administrative Judge's adverse decision should be reversed because the Judge erroneously applied Guideline B Disqualifying Conditions 1, 2 and 8. [\(2\)](#) In support of that contention, Applicant argues that she is not close to her Taiwanese parents, does not share living quarters with them, is not dependent on them for financial support, and does not have close ties to Taiwan. Applicant also offers new evidence in the form of statements as to her parents current citizenship and residence status, and her own financial status and living arrangements. The Board does not find these arguments persuasive.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. And such evidence does not demonstrate error on the part of the Judge.

The Administrative Judge made sustainable findings that: (1) Applicant was born in Taiwan, moved to the U.S. in 1997, and became a U.S. citizen in 2002; (2) Applicant's parents are citizens of Taiwan, residing in Taiwan; (3) Applicant's father is a physician in Taiwan and her mother is a housewife; (4) Applicant's parents own a house in Taiwan valued at approximately \$600,000 USD and a bank account with about \$500,000 in it (5) Applicant contacts her parents once a week by telephone and once a week by e-mail; (6) Applicant lives in a home that was purchased and is owned by her parents; (7) Applicant relies upon her parents for her living expenses and miscellaneous bills; and (8) Applicant traveled to Taiwan on seven separate occasions in 1998, 2000, 2001 (twice), 2002 and 2003. Given those findings, the Judge's conclusions that Applicant's ties with those immediate family members raised security concerns under Guideline B and that Disqualifying Conditions 1, 2, and 8 applied are sustainable. Those conclusions, in turn, shifted the burden of

persuasion to Applicant. If there are admitted or proven facts and circumstances that raise security concerns, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

The application of Adjudicative Guidelines disqualifying and mitigating conditions does not turn simply on a finding that one or more of them applies to the particular facts of a case. Rather, the application of a disqualifying or mitigating condition requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.*, ISCR Case No. 01-14740 at 7 (App. Bd. Jan. 15, 2003). As the trier of fact, the Administrative Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. Applicant's disagreement with the Judge's weighing of the record evidence is not sufficient to demonstrate the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law.

Applicant had the burden of providing evidence sufficient to overcome the government's security concerns. Applicant's arguments do not demonstrate that it was arbitrary, capricious, or contrary to law for the Administrative Judge to conclude that Applicant had not met her burden of mitigation, extenuation, or refutation under the relevant mitigating conditions or whole person factors. The Board does not review a case *de novo*. Given the record that was before her, the Judge's overall unfavorable security clearance decision under Guideline B is not arbitrary, capricious, or contrary to law.

### Order

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

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, 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

1. The Administrative Judge found in Applicant's favor under Guideline C. That favorable finding is not at issue on appeal. In the "Formal Findings" sections of her decision, the Judge entered favorable findings under Guideline B and unfavorable findings under Guideline C. However, it is clear from the text of the Judge's decision that she intended just the opposite, and that those entries are a typographical error.

2. Directive ¶ E2.A2.1.2.1 ("An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country"); Directive ¶ E2.A2.1.2.2 ("Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists"); Directive ¶ E2.A2.1.2.8 ("A substantial financial interest in a country, or in any foreign-

owned or -operated business that could make the individual vulnerable to foreign influence").