

KEYWORD: Guideline B

DIGEST: Once the government presents evidence raising trustworthiness concerns, the burden shifts to the Applicant to establish any appropriate mitigating conditions. In this case the Judge noted that Applicant had presented no information several aspects of his foreign contacts. Adverse decision affirmed.

CASENO: 05-10843.a1

DATE: 11/20/2007

DATE: November 20, 2007

In Re:)	
)	
-----)	ADP Case No. 05-10843
)	
Applicant for Trustworthiness Determination)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a

trustworthiness determination. On December 29, 2006, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under 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 June 28, 2007, after considering the record, Administrative Judge Joseph Testan denied Applicant’s request for a trustworthiness determination. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

We construe Applicant’s appeal as raising the following issue: whether the Judge’s adverse trustworthiness determination is arbitrary, capricious, or contrary to law. Finding no error we affirm.

The Judge made the following findings: Applicant was born in South Korea. He subsequently emigrated to the U.S. and became a U.S. citizen in 1999. His mother is a dual citizen of the U.S. and Taiwan. He has two brothers, both of whom are U.S. citizens. One brother works in South Korea, the other in Taiwan. His parents-in-law, sisters-in-law, and brothers-in-law are citizens and residents of Taiwan. Applicant has traveled to Taiwan on eight occasions since moving to South Korea in 2004.

In analyzing the case, the Judge noted that Applicant presented no information (1) concerning his relationship with his in-laws or what positions they hold in Taiwan; (2) when Applicant came to the U.S.; (3) the extent of any close relatives or relationship in the U.S.; or (4) the extent of his financial assets in the U.S., Taiwan, or South Korea. The Judge stated that he was not able to conclude that Applicant had met his burden of persuasion for a favorable trustworthiness determination. *See* Directive ¶ E3.1.15. (Once the government presents evidence raising trustworthiness concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions.) Applicant’s brief relies on new evidence. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.

Order

The Judge’s adverse trustworthiness determination is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board