

KEYWORD: Guideline B; Guideline C

DIGEST: The Judge noted Applicant's ties to the U.S. and his employment. The Judge also took into account his strong ties to his Taiwanese family members, his voluntary trips to visit them, and a paucity of record evidence concerning the relative strength of his obligations to the U.S. and his obligations to his family members in Taiwan. Balancing evidence of the disqualifying and mitigating conditions, the Judge concluded that Applicant had not met his burden of persuasion as to mitigation. Applicant submitted new evidence in support of his appeal. The Board cannot consider new evidence in performing appellate review. The Judge's material findings of security concern are based upon substantial record evidence. To the extent that the Judge's findings may contain error, such error is harmless in that it would not likely affect the outcome of the case

CASENO: 07-01474.a1

DATE: 08/26/2008

DATE: August 26, 2008

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 07-01474
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 9, 2007, DOHA issued a statement of reasons (SOR) 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 decision on the written record. On May 30, 2008, after considering the record, Administrative Judge Joseph Testan denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether certain of the Judge’s findings of fact are based upon substantial record evidence; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no harmful error, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an employee of a defense contractor. He was born in Taiwan. After graduating from a university there “he served a little less than two years in the Taiwanese military. This service was mandatory.” Decision at 2. After completing his military service, he moved to the U.S., where he received a Ph.D. He worked in Taiwan for the Taiwanese Government for four years, after which he returned to the U.S. Applicant began working for his current employer in 1996. He became a U.S. citizen in May 2002 and received a U.S. passport a month later.

Applicant’s parents, and two of his siblings, are citizens and residents of Taiwan. He visited Taiwan in 2000 and 2002 for the purpose of visiting his family. During the latter trip he traveled on both a U.S. and a Taiwanese passport. He had obtained the latter passport before becoming an American citizen. By letter dated January 22, 2008, Applicant’s security officer advised that Applicant had surrendered his passport and that the document would be destroyed.

Applicant has described his relationship with his Taiwanese relatives as close. He speaks with his parents once a month and with his siblings once every other month. Taiwan is a multi-party democracy with a population of about 23 million. “It is one of the most active collectors of sensitive United States information and technology. Numerous individuals and companies have been subjected to civil penalties and/or prosecuted for illegally exporting, or attempting to illegally export, sensitive United States technology to Taiwan.” *Id.* at 3.

In evaluating Applicant’s case, the Judge noted Applicant’s ties to the U.S., *i.e.*, his wife and children, and his employment. However, the Judge also took into account his strong ties to his Taiwanese family members, his voluntary trips to visit them, and a paucity of record evidence concerning the relative strength of his obligations to the U.S. and his obligations to his family members in Taiwan. Balancing evidence of the disqualifying and mitigating conditions, the Judge concluded that Applicant had not met his burden of persuasion as to mitigation. *Id.* at 7.

Applicant submitted new evidence in support of his appeal. The Board cannot consider new evidence in performing appellate review. See Directive E3.1.29. We have examined the Judge's findings in light of the record as a whole. The Judge's material findings of security concern are based upon substantial record evidence. See Directive ¶ E3.1.32.1. (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.") To the extent that the Judge's findings may contain error, such error is harmless in that it would not likely affect the outcome of the case.<sup>1</sup> A review of the entire record demonstrates that the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision, both as regards to the pertinent mitigating conditions and the whole-person analysis. See ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). See also *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's decision that "it is not clearly consistent with national security to grant [A]pplicant eligibility for a security clearance" is sustainable on this record. Decision at 7. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

### Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple

Michael D. Hipple  
Administrative Judge  
Member, 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

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<sup>1</sup>Applicant stated, for example, that his wife was not born in the U.S., as the Judge had found, and that his previous employment in Taiwan was in a scientific, rather than a defense-related, field.