

KEYWORD: Guideline C; Guideline B

DIGEST: Although pro se applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. Adverse decision affirmed.

CASENO: 10-07016.a1

DATE: 01/27/2012

DATE: January 27, 2012

In Re:	)	
	)	
-----	)	ISCR Case No. 10-07016
	)	
Applicant for Security Clearance	)	
	)	

**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 April 8, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) and

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 November 30, 2011, after considering the record, Administrative Judge Carol G. Ricciardello denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline C are not at issue in this appeal. Consistent with the following, we affirm the Judge's decision.

Applicant was born in Taiwan, marrying in the early 1980s. He and his wife immigrated to another country a year later. Applicant became a citizen of that country in the mid-1980s. He subsequently moved to the U.S. and became a citizen of this country in the late 1990s. His wife also became a citizen of the other country and of the U.S., although the dates cannot be determined from the record.

Applicant's wife has relatives in Taiwan. Her father is retired from the Taiwanese military and a sibling works for a research institute. Applicant and his wife own property in Taiwan worth about \$600,000, and they have a Taiwanese bank account worth about \$190,000. Although Applicant claimed that his ties with his in-laws were minimal, there is insufficient evidence as to the extent of his wife's ties to them. Applicant applied for and received a Taiwanese passport after he became a U.S. citizen. He used the passport, although he recently surrendered it to his facilities security officer. It has since been destroyed. Applicant has expressed some feelings of allegiance to Taiwan and has stated that he was considering retiring there. Applicant understands that a benefit of Taiwanese citizenship is access to the health care system in that country. In an interview, he expressed some feeling of allegiance to Taiwan, because it is the country of his birth.

Taiwan has been identified as participating in criminal espionage. It has been involved in cases involving illegal export or attempted illegal export of U.S. restricted dual-use technology. The People's Republic of China maintains intelligence operations in Taiwan.

In the Analysis, the Judge concluded that Applicant had failed to mitigate the Guideline B security concerns raised by his ties to Taiwan. She stated that Applicant did not provide enough information to resolve these concerns. Additionally, she noted a statement that Applicant had made to 2010 to the effect that he was unwilling to renounce his Taiwanese citizenship.

Applicant contends that he submitted information about the sale of his Taiwanese property that did not make it into the record. However, Applicant was advised of his right to submit matters in response to the File of Relevant Material (FORM), with his response due no later than October 22, 2011. Applicant responded to the FORM by letter dated September 24, 2011. In this letter he did not request an extension of time in which to submit additional material. His appeal brief avers that he mailed the information about the sale of his property on November 28, 2011, two days before the date of the Judge's decision. Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 10-03743 at 2 (App. Bd. Jun. 24, 2011). Under the circumstances, this

information constitutes new evidence, insofar as it was submitted after the close of the record. We cannot consider new evidence on appeal. See Directive ¶ E3.1.29. (“No new evidence shall be received or considered by the Appeal Board”).

Applicant challenges the Judge’s conclusions regarding his in-laws. Here, too, he presents new evidence the Board cannot consider. The Judge’s analysis is consistent with prior Appeal Board rulings that there is a rebuttable presumption that a person has ties with or obligations to the immediate family members of the person’s spouse. See, e.g., ISCR Case No. 10-07436 at fn. 5 (App. Bd. Oct. 19, 2011).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *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 adverse decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). See also Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

### Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, 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