

KEYWORD: Guideline B

DIGEST: A paucity of evidence concerning a security-significant matter may undermine an applicant's ability to meet their burden of mitigation. Adverse decision affirmed.

CASENO: 12-00084.a1

DATE: 05/22/2014

DATE: May 22, 2014

In Re:)	
)	
-----)	ISCR Case No. 12-00084
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 3, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of

Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 28, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in concluding that Applicant's circumstances raised security concerns and whether the Judge's decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Born and raised in the U.S., Applicant has worked for a Government contractor since 1990 and has held a security clearance since the mid-1980s. His wife was born and raised in Taiwan, becoming a naturalized U.S. citizen a few years ago. She retains dual citizenship with Taiwan, although she uses a U.S. passport when she travels. All members of Applicant's own family are residents and citizens of the U.S. However, Applicant's parents-in-law are citizens and residents of Taiwan, as are his wife's two siblings, her cousin, and her uncle. Applicant's wife speaks with her mother once a week by telephone, and she and Applicant visit her parents annually. These visits are Applicant's only contact with his parents-in-law. One of Applicant's wife's siblings works for an agency of the government of Taiwan. The Judge found that "[t]he record is void of detailed information about the structure and purpose of the specific investigative agency for which [the sibling] works." Decision at 3. Applicant has in-person contact with this in-law every couple of years. Due to a language barrier, there is no direct communication between Applicant and this person. Applicant's other sibling-in-law speaks English, and his wife communicates with this person frequently, as the two are very close. Applicant and his wife go to Taiwan annually, staying at the home of the parents-in-law for approximately two-weeks. Applicant reports all his foreign trips to the facility security officer (FSO).

Applicant and his wife have assets in the U.S. valued at over \$1,500,000. They have no delinquent debt. Applicant is "the foremost expert" in his profession, who enjoys an excellent reputation for honesty, integrity, and loyalty to the U.S. He recently won a prestigious award from his employer. His performance appraisals evidence superb duty performance. He receives annual training on industrial espionage.

The U.S. has recognized the People's Republic of China (PRC) as the sole legal government in China. However, the U.S. maintains unofficial relations with Taiwan and has provided it with some military technology. Taiwan has been identified as an active collector of U.S. economic intelligence. There have been several cases involving the illegal export of U.S. restricted technology to Taiwan, including a criminal conviction of a high-ranking official with the U.S. Department of State for illegally removing classified materials. The PRC maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under Guideline B. She cited to evidence that Applicant has numerous in-laws living in a country that actively collects industrial information and engages in industrial espionage. She stated that Applicant's connections with his in-law who works for the Taiwanese government could create a potential conflict of interest and that his wife's close relationship with her family members in Taiwan also poses a heightened risk of coercion.

In evaluating Applicant's case for mitigation, the Judge acknowledged that he had lived his entire life in the U.S. and that all members of his own extended family reside here; that he is a major contributor to his employer's success; and that he communicates with his wife's relatives infrequently because of the language barrier. She also noted that Applicant has reported his foreign travels and other pertinent information to his FSO. However, the Judge stated that there was insufficient record evidence concerning the governmental job of Applicant's Taiwanese sibling-in-law, and of the employing agency itself, to permit a conclusion that Applicant would not likely be placed in a conflict of interest or that he would not otherwise be subjected to a heightened risk for foreign exploitation.

Discussion

Applicant challenges the Judge's conclusion that his circumstances raised Guideline B concerns. He argues that the language barrier between himself and his in-laws precludes a reasonable possibility that they could become a means through which he might compromise classified information. He cites to evidence of his long-standing ties within the U.S. and argues that the sibling-in-law who works for the government of Taiwan does not pose a heightened risk of coercion. He also states that there is no evidence of terrorist activity in Taiwan. While acknowledging evidence and the Judge's findings about Applicant's connections in the U.S., we note prior cases in which we stated that in-laws can present a security risk. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the persons' spouse." ISCR Case No.12-07647 at 3 (App. Bd. Nov. 7, 2013). In this case, Applicant's wife has extensive family connections in Taiwan, with at least some of whom she is close and with whom she communicates frequently. This evidence, considered in light of the Judge's findings about the in-law who works for the Taiwanese government and about Taiwan's history of industrial espionage, are sufficient to raise the "heightened risk" element of DC 7(a)¹ and (d).² See, e.g., ISCR Case No. 08-04488 at 4 (App. Bd. Apr. 23, 2009). As we have stated elsewhere, the Government is not required to prove a direct nexus between an applicant's circumstances and the concern addressed by Guideline B. See, e.g., ISCR Case No. 09-05812 at 3 (App. Bd. Dec. 1, 2011). Rather, a Judge is required to examine the nature and extent of foreign

¹Directive, Enclosure 2 ¶ 7(a): "contact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion[.]"

²Directive, Enclosure 2 ¶ 7(d): "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion[.]"

contacts, taking into account evidence of the geopolitical situation of the foreign country involved. The Judge's conclusion that the record raises security concerns is supportable.

In evaluating Applicant's case for mitigation, the Judge placed particular emphasis on the Taiwanese government employee. While record evidence about this person is sparse, it was Applicant who bore the burden of persuasion as to mitigation of the concerns raised in the SOR. Directive ¶ E3.1.15. A paucity of evidence concerning a security-significant matter may well undermine an applicant's ability to meet this burden. *See, e.g.*, ISCR Case No. 11-03452 at 6 (App. Bd. Jun. 6, 2012). Given the totality of evidence concerning Applicant's family connections in a country that practices economic espionage against the U.S. and in which PRC intelligence operatives are at work, we cannot say that the Judge's evaluation of the circumstances surrounding this in-law was erroneous. It is a reasonable concern that a relative who works for a foreign government could be a means through which an applicant might be subjected to coercion. The Judge's adverse decision reflects a supportable conclusion that Applicant failed to provide sufficient evidence about this in-law to meet his burden of persuasion under the standard set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988): "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" We have considered the entirety of Applicant's brief and find therein no basis to overturn the Judge's decision. We note his argument that there is no evidence of terrorist activity in Taiwan. However, terrorists are not the only ones who might be interested in acquiring U.S. protected information.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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