

KEYWORD: Guideline B

DIGEST: We conclude that the Judge's material findings of security concern are supported by substantial evidence or constitute reasonable conclusions that could be drawn from the evidence. Applicant notes that the SOR alleges that he has five siblings, although he has only four. The Judge amended the SOR to reflect four siblings. His findings make references to Applicant's siblings without specifically stating the precise number. We find no error in the Judge's decision about this matter. Adverse decision affirmed.

CASENO: 15-00042.a1

DATE: 07/06/2016

DATE: July 6, 2016

In Re:)	
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Applicant for Security Clearance)	ISCR Case No. 15-00042

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 3, 2015, 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 April 14, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Francisco Mendez 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’s findings of fact contained errors and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant was born in China. He came to the U.S. in the late 1980s and became a U.S. citizen a decade later. Applicant is a member of an ethnic and cultural minority in China, and he and his family have experienced hardship and persecution at the hands of the Chinese government. Applicant has been married for 30 years, and he and his wife have three children, all of whom were born in the U.S. They have substantial assets in the U.S.

Applicant’s parents and siblings are residents and citizens of China. He speaks with his parents about three to four times a year and to his other siblings, save one, even less. Applicant has no contact at all with the one other sibling. Applicant has traveled to China on several occasions and has been subjected to added scrutiny. Applicant has maintained a web site devoted to the interests of his ethnic group and has engaged in peaceful demonstrations in the U.S. against China. Applicant was denied access to a U.S. Government facility by another Government agency due to his foreign contacts.

China is an authoritarian state in which the Communist Party is supreme. It is actively engaged in collecting U.S. information and has conducted large-scale cyber-espionage against this country. It has a poor human rights record. Visitors to China may have their hotel rooms, internet usage, fax machines, etc. monitored. China has engaged in systematic repression and coercion of ethnic minorities.

The Judge’s Analysis

The Judge concluded that Applicant’s connections in China raised security concerns. In evaluating his case for mitigation, the Judge noted Applicant’s testimony that he has significant ties to the U.S. and that he communicates infrequently with his foreign relatives. Nevertheless, the Judge also concluded that Applicant is close to his family, as evidenced by his travels to China to visit them. He also stated that Applicant did not rebut the presumption that he had ties of obligation to his wife’s Chinese relatives. He concluded that Applicant had not mitigated the security concerns arising from his connections in China.

Discussion

Applicant challenges some of the Judge's findings. We conclude that the Judge's material findings of security concern are supported by substantial evidence or constitute reasonable conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014). Applicant notes that the SOR alleges that he has five siblings, although the evidence supports only four. He argues that the Judge did not correct this error. However, the Judge stated at the hearing that he would amend the SOR to reflect four siblings. Tr. at 37. He made a pen and ink change to the SOR. His findings make repeated references to Applicant's siblings without specifically stating the precise number. We find no error in the Judge's findings or analysis about this matter.

Applicant's citation to various pieces of evidence, such as his having destroyed his passport, his security training certificates, etc., is not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither is it sufficient to show that the Judge misweighed the evidence. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016). The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. *See* ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007) (In Foreign Influence cases, the nature of the foreign government involved, the intelligence-gathering history of that government, and the country's human rights record are important considerations.) "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 Decision is **AFFIRMED**.

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields

William S. Fields
Administrative Judge
Member, Appeal Board

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