

KEYWORD: Guideline B

DIGEST: The Judge’s material findings are supported by substantial evidence. Applicant failed to rebut the presumption that the Judge considered all of the evidence. In Foreign Influence cases, the nature of the government involved, its intelligence-gathering history, and its human rights record provide context for the Judge’s ultimate decision. There is a rational connection between an applicant’s family ties in a country whose interests are adverse to those of the U.S. and the risk that the applicant might fail to protect classified information. Adverse decision affirmed.

CASE NO: 15-00528.a1

DATE: 03/13/2017

DATE: March 13, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-00528
)	
Applicant for Security Clearance)	

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 8, 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 November 30, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA)

Administrative Judge Juan J. Rivera 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 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 works for a Defense contractor. She received a bachelor's degree in China and is pursuing a master's in the U.S. Her husband came to the U.S. in the early 1990s. About a decade later he visited China, where he met Applicant. In the mid-2000s, Applicant came to the U.S. as well. She and her husband have two children, both of whom were born in this country. Applicant has retirement accounts in the U.S. and has no financial or property interests in China.

Applicant's parents are citizens and residents of China. Retired, they own two condominiums there. Applicant speaks with them two to four times a month. Applicant's parents are generally aware of the kind of work she does. Applicant has no siblings and has maintained no contact with friends from college.

Applicant traveled to China in 2009, 2010, 2012, 2014, and 2016. Her parents visited her three times from 2009 to 2013. When Applicant acquired U.S. citizenship, the Chinese government revoked her Chinese passport because China does not recognize dual citizenship. Applicant enjoys an excellent reputation for her duty performance. A witness, a relative who holds security clearance, states that Applicant has stronger ties to the U.S. than to China. Applicant's performance appraisal evidences important contributions to her employer's mission, and, in 2015, she received a job promotion.

China is one of the most aggressive collectors of U.S. economic and technological information. China's attempts to acquire U.S. information are expected to constitute a growing threat to this country's economic security. Among other things, China uses its computer network capability to acquire intelligence that could benefit its defense capability. It is able to acquire useful information under the aegis of civilian research and development. The Chinese government has conducted large scale cyber espionage against the U.S., compromising U.S. computer networks of the DoD, Defense contractors, and private entities. China's most effective means of acquiring intelligence and technology are cyber espionage, collection by Chinese students, scholars, and scientists (whether witting or unwitting), joint ventures, and foreign cooperation.

The U.S. State Department has reported human rights abuses in China. Among other things, visitors to China may be subject to surveillance. Hotel rooms, cars, telephones, internet usage, etc., may be monitored.

The Judge's Analysis

The Judge concluded that Applicant's relationship with her Chinese parents is sufficiently close that she could be subject to foreign influence or subjected to a possible conflict of interest. In evaluating Applicant's case for mitigation, the Judge cited to her regular and frequent contact with her parents, both electronically and through travel. Though acknowledging that there is no evidence that the Chinese government has actually tried to exert pressure on Applicant or her parents, he stated that her family could become targets of intelligence agents. He noted evidence of Applicant's strong ties within the U.S. However, he concluded that Applicant's close relationship with her parents and their awareness of the general nature of Applicant's work, render her vulnerable to coercion.

In the whole-person analysis, the Judge stated that the weight of the record evidence militated against granting Applicant access to classified information, citing to her closeness to her parents and her frequent visits and regular communications with them. Though not questioning Applicant's patriotism, he concluded that she could be placed in a position of having to choose between her ties in the U.S. and those in China.

Discussion

Applicant argues that the Judge overstated the frequency of her travel to China. However, his findings about Applicant's travels to that country and her parents' visits in the U.S. are consistent with her testimony at the hearing, statements in her security clearance application, and her Answer to the SOR. Tr. at 51-52, 57-58; SCA at 29-43; SOR Answer, dated October 6, 2015. We conclude that the challenged finding is based upon substantial record evidence. *See, e.g.*, ISCR Case No. 15-01285 at 3 (App. Bd. Dec. 22, 2016). Applicant argues that the Judge failed to consider significant evidence of her loyalties and relationships in the U.S. She states that he did not weigh her family connections in this country, denying that she could be subjected to a conflict of interest. She argues that her communications with her parents are casual and that her visits to China are solely of a personal, rather than official, nature, lessening the likelihood that she could be subjected to foreign coercion.

In Foreign Influence cases, the nature of the foreign government involved and the intelligence gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration. *See, e.g.*, ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007); ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006). There is a rational connection between an applicant's family ties in a country whose interests are adverse to the United States and the risk that the applicant might fail to protect and safeguard classified information. *See, e.g.*, ISCR Case No. 10-07436 at 3, n. 4 (App. Bd. Oct. 19, 2011).

We note record evidence and the Judge's findings of the following: Applicant's parents reside in China; Applicant communicates with them frequently; Applicant has visited them or they

her on a regular basis; Applicant's parents are aware of the location and general nature of her work; China practices espionage against the U.S.; and China has used its cyber-espionage capability to compromise DoD and contractor computer systems. This evidence supports the Judge's conclusion that Applicant's parents could become a means through which Applicant could come to the attention of Chinese intelligence personnel and be subjected to coercion or pressure. The Judge discussed Applicant's ties within the U.S. and gave partial applicability to Mitigating Condition 8(b).¹ The Judge's pertinent analysis explaining why the ties in the U.S. do not fully mitigate the risks posed by the presence of Applicant's parents in China is sustainable. Applicant's arguments, viewed as a whole, are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02040 at 2 (App. Bd. Feb. 14, 2017). Neither are they sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08842 at 3 (App. Bd. Feb. 14, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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 Decision is **AFFIRMED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

¹Directive, Enclosure 2 ¶ 8(b): "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest."

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board