

KEYWORD: Guideline B

DIGEST: Given evidence of China's aggressive efforts to obtain U.S. protected information, its history of monitoring electronic and telephonic communications, and Applicant's apparently regular communications with his relatives, we find no reason to disturb the presumption that there is a nexus between Applicant's circumstances and a concern that he could be placed in a conflict of interest. Adverse decision affirmed.

CASENO: 15-04389.a1

DATE: 02/27/2018

DATE: February 27, 2018

In Re:

Applicant for Security Clearance

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) ISCR Case No. 15-04389
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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 March 16, 2016, 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 decision on the written record. On October 27, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 his circumstances actually raised security concerns; whether the Judge failed to consider all of the evidence in the record; 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, where he earned his undergraduate degree as well as a master’s. He came to the U.S. in the mid-1990s and obtained a doctorate a few years later from a university in this country. Applicant was originally granted a clearance from another Government agency, which transferred to his current employer, a Defense contractor, in 2014. Later that year he submitted a security clearance application to receive a higher level clearance.

Applicant’s wife was born in China, becoming a naturalized citizen about 12 years after coming to the U.S. with Applicant. The couple has two children, both born in the U.S. Applicant’s wife traveled to China in 2012 to visit relatives. Applicant’s parents, as well as his parents-in-law, are citizens and residents of China. Applicant last saw his parents in the mid-2000s, when they visited him in the U.S. Applicant communicates with his parents and his siblings, who are also citizens and residents of China, quarterly or annually, by telephone or by email. One sibling is a teacher. Applicant does not know the employer of his other sibling, although this person previously worked for the Chinese military in some capacity.

Applicant sends his parents and his parents-in-law a few hundred dollars every year to pay for living expenses. Applicant has not returned to China since he first came to the U.S. He states that he does not intend to return to China because of its human rights violations. Applicant owns a home in the U.S. valued at about \$418,000. He has about \$65,000 worth in investment accounts in the U.S. He has received numerous awards for his work in support of the U.S., and supervisors and colleagues attest to his work ethic and loyalty to the U.S.

The Judge took administrative notice of facts contained in exhibits submitted by the Government and by Applicant. She noted China’s poor human rights record, its role as the most active and persistent practitioner of economic and military espionage against the U.S., its “hostility to U.S. interests,” and its surveillance of visitors to China. She cited to several cases arising from acts of espionage and illegal export of information to China.

The Judge's Analysis

In concluding that Applicant's circumstances raised security concerns, the Judge noted China's poor human rights record. She stated that the chances of coercion are greater from a country with an authoritarian government that is known to conduct intelligence gathering against the U.S., or has interests in opposition to those of this country. Accordingly, given Applicant's close family connections in China, the Judge concluded that he could be forced to choose between his loyalties to them and his ties to the U.S. Moreover, the Judge concluded that Applicant had not mitigated the concerns arising from his family members in China. She cited to evidence that he sends money each year both to his parents and to his in-laws and that his wife visited China a few years ago. She stated that Applicant maintains regular contact with his relatives through phone calls and electronic communications. Though finding his love and concern for his family to be commendable, the Judge concluded that Applicant did not mitigate the concerns arising from his connections in China.

Discussion

Applicant contends that the Judge erred in concluding that his circumstances raised security concerns. Among other things, he argues that his circumstances do not pose a risk of a conflict of interest, contending that the concerns that the Judge identified are merely speculative. He argues that in the years during which he has held a clearance no actions have been taken against his relatives by persons in China.

However, the Directive presumes a nexus between admitted or proved conduct or circumstances under any of the Guidelines and an applicant's eligibility for a security clearance. *See, e.g.*, ISCR Case No. 15-06731 at 3 (App. Bd. Dec. 6, 2017). In the case before us, Applicant admitted the allegations in the SOR and the Government presented evidence of them as well, in the form of Applicant's answers in his SCA and in his clearance interview. In addition, factors such as the obscurity of an applicant's foreign relatives or failure of foreign authorities to contact them do not provide a significant measure of whether the applicant's circumstances pose a risk. Rather, it is the nature of the ties themselves that raise a concern. *See, e.g.*, ISCR Case No. 14-03112 at 4 (App. Bd. Nov. 3, 2015).

Given evidence of China's aggressive efforts to obtain U.S. protected information, its history of monitoring electronic and telephonic communications (*see* Item 5, Administrative Notice Documents, at p. 6), and Applicant's apparently regular communications with his relatives, either directly or through his spouse, we find no reason to disturb the presumption that there is a nexus between Applicant's circumstances and a concern that he could be placed in a conflict of interest. *See, e.g.*, ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017) for the proposition that 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. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528-529 (1988) ("A clearance does not equate with passing judgment upon an individual's character. Instead, it is only an attempt to predict his possible future behavior and to assess whether, under compulsion of circumstances or for other reasons, he might compromise sensitive information. It may be based, to be sure, upon past or

present conduct, but it also may be based upon concerns completely unrelated to conduct, such as having close relatives residing in a country hostile to the United States”)

The balance of Applicant’s brief consists of a detailed presentation of his many academic and professional accomplishments, his devotion to and support of his family in the U.S., and his community activities. He argues that the Judge erred by failing to contact one of his character references, who he contends would have provided additional significant evidence in support of Applicant’s clearance. On this point, a Judge has no obligation to contact witnesses or conduct other investigation or inquiry into a case. To do so would be inconsistent with the Judge’s role as an impartial fact finder. *See, e.g.*, ISCR Case No. 15-05310 at 2 (App. Bd. Dec. 1, 2017). The Judge noted Applicant’s evidence, incorporating her findings about it into the Analysis. Applicant’s arguments do not rebut the presumption that the Judge considered all of the evidence, nor do they show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board