

KEYWORD: Guideline B

DIGEST: The evidence reflects that Applicant’s wife maintains close contact with her mother and sister, that Applicant and his wife received a \$5,000 loan from his in-laws, and that he typically meets with them on his trips to China. In-laws represent a class of persons who can present a security risk. “As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” We find no reason to disturb the Judge’s essential conclusion that Applicant’s decision to marry his second wife while still married to his first wife raises at the very least doubts about hid judgement and trustworthiness. Adverse decision affirmed.

CASENO: 15-05357.a1

DATE: 10/18/2018

DATE: October 18, 2018

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In Re:)	
-----)	ISCR Case No. 15-05357
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 14, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 9, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Roger C. Wesley 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 found in favor of Applicant on three Guideline E allegations that are not an issue on appeal and are not discussed below. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He served in the military and received a “general discharge for misconduct (sexual transgressions and violating orders)” in 1990. Decision at 5.

Applicant married his first wife in 1999, separated from her in 2011, and divorced her in 2013. In early 2011, he traveled to Hong Kong and Thailand to meet random people through dating websites. Around that time, he traveled to China to meet the woman who became his second wife. She was born and raised in China. They met through a website, and he began paying for English lessons for her. While still married to his first wife and living in a Middle Eastern country that permits male residents to have multiple wives, he married his second wife in March 2012. It is unclear whether the validity of his second marriage would be upheld if challenged in the United States. His second wife came to the United States in 2013 and became a U.S. citizen in 2015. Applicant and his current wife have a child who was born in the United States. They currently reside in the Middle Eastern country. He plans to place his family’s roots in the United States. After arriving in the Middle Eastern country in early 2012, he disclosed his relationship with his current wife to his supervisor. However, his Facility Security Officer did not learn of his marriage to a then-foreign national until he submitted a security clearance application in August 2012.

Applicant’s father-in-law is deceased. His mother-in-law, sister-in-law, and sister-in-law’s husband are citizens and residents of China. His wife maintains close contact with her mother and sister. His mother-in-law is a homemaker and his sister-in-law owns a business. Little is known about the sister-in-laws’ husband. Applicant has little contact with his in-laws due to language differences.

In 2013, Applicant and his wife started an online business that involved shipping products from China. They invested approximately \$15,000 in the business. His in-laws loaned them about \$5,000 for business purchases. He repaid those loans. In 2014, they closed the business following the birth of their son. Between 2011 and 2017, he has traveled to China on a number of occasions

for business and personal purposes. Typically, on his trips to China, he would meet with his wife's family.

China is known to use its intelligence services to collect information about the United States and obtain advanced technologies. It actively monitors communications satellites and collects information on U.S. military operations and exercises. Its actors are the world's most active and persistent perpetrators of economic espionage. It uses its cyber capabilities to support intelligence collection against U.S. diplomatic, economic, and defense entities. Reports of Chinese espionage extend back 15 years. China is an authoritarian state with a wide variety of human rights violations.

The Judge's Analysis

Applicant's contacts in China create a heightened risk of foreign exploitation or coercion. Little is known about his in-laws. Due to these foreign contacts, a potential conflict of interest between Applicant's obligation to protect classified or sensitive information and his desire to help his in-laws cannot be ruled out at this time. None of the Guideline B mitigating conditions apply to the circumstances in this case.

Under Guideline E, the Judge, in part, concluded:

Afforded opportunities at hearing, Applicant could provide no saving legal explanation for his entering into a marriage with his current spouse with the knowledge that he was still in a legal marriage relationship with his first wife. His claim that his marriage contract with his current spouse was legally consummated and is enforceable under his host country's Sharia law is highly unlikely to draw comity acceptance against any hypothetical bigamy charges waged against Applicant under cover of state bigamy laws in the United States that criminalize bigamy. Comity principles recognized under our U.S. system of federalism do not require courts to recognize bigamous marriages consummated in foreign countries whose laws sanction bigamous marriages that conflict with marriage laws in force throughout the United States.¹

Discussion

Applicant contends that his relationship with his in-laws is minimal and notes that, due to language differences, he cannot communicate with them directly. This argument is not persuasive. The evidence reflects that Applicant's wife maintains close contact with her mother and sister, that Applicant and his wife received a \$5,000 loan from his in-laws, and that he typically meets with them on his trips to China. In-laws represent a class of persons who can present a security risk. "As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." *See*,

¹ Decision at 15.

e.g., ISCR Case No. 15-07068 at 3 (App. Bd. Sep. 7, 2018). In his case, Applicant has failed to rebut that presumption.

Applicant also argues that his marriage to his second wife was legal under the laws of the Middle Eastern country where it occurred, that he was already separated from his first wife at that time, and the Judge concluded it was unlikely he would face criminal prosecution for bigamy. These arguments are not convincing. We find no reason to disturb the Judge’s essential conclusion that Applicant’s decision to marry his second wife while still married to his first wife raises at the very least doubts about his judgement and trustworthiness.²

Applicant further argues that the Judge failed to consider all of the record evidence, misweighed the evidence, and misapplied the mitigating conditions and whole-person concept. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor 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. 17-02488 at 3 (App. Bd. Aug. 30, 2018). We give due consideration to the Hearing Office case that Applicant’s Counsel has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.* at 3-4. “Each case must be judged on its own merits.” Directive, Encl. 2, App. A ¶ 2(b).

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.”

² The Judge also noted that Disqualifying Condition 16(e) under Guideline E provides that, while in another country, engaging in legal conduct there, but illegal in the United States, may create a vulnerability to exploitation, manipulation, or duress. Directive, Encl. 2, App. A ¶ 16(e).

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