

KEYWORD: Guideline B

DIGEST: Applicant contends that the findings do not support the Judge’s application of the disqualifying and mitigating conditions as well as her whole-person analysis. He cites to such things as the significant language barrier between Applicant and his in-laws and what he considers to be the infrequency of their direct contact. He also argues that Applicant’s relationship with H and W is casual and infrequent. Applicant’s argument is, in effect, a disagreement with the Judge’s weighing of the evidence. Such a disagreement is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. The evidence described above, viewed in its totality, supports the Judge’s overall adverse conclusions. Adverse decision affirmed.

CASENO: 15-06817.a1

DATE: 02/12/2018

DATE: February 12, 2018

In Re:)	
)	
-----)	ISCR Case No. 15-06817
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

I. Charles McCullough, III, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 10, 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 23, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant's wife was born in China, becoming a naturalized U.S. citizen in the late 1990s. Applicant's wife's mother, siblings, and nephews and niece are citizens and residents of China. Applicant does not speak Chinese, and his in-laws do not speak English. Therefore, they are not able to communicate directly with one another. A few years ago, Applicant's wife loaned her nephew \$20,000 for down payment on a house. Applicant's wife has kept this transaction separate from Applicant. The couple expects to be repaid, but Applicant provided no information as to the extent to which the nephew has made payments on the loan. Applicant travels with his wife about once a year to visit her family. They stay in a hotel when they visit.

Applicant and his wife are friends with H and W, who are citizens and residents of China. H is employed by the Chinese government. Applicant's wife has been friends with W since college. Applicant met the couple in about 2008 during a visit to China. His wife owned a townhouse in the U.S. and rented it to H and W while they were in this country. The lease was signed by H and by a representative of the Chinese government, and the Chinese government paid the rent. Although initially the checks were deposited in his wife's account solely, they were later placed in a joint account. Applicant states that H and W are not aware of his contractor job and they never discuss their jobs among themselves.

China is one of the most aggressive collectors of U.S. economic information. Its intelligence agencies, as well as private companies, often try to exploit Chinese citizens or persons with family ties to China. It represents a growing and persistent threat to U.S. economic security. It uses cyber capabilities in furtherance of its effort to obtain U.S. protected information. It targets computer systems around the globe, including those owned by the U.S. Government. Visitors to China may be placed under surveillance. Hotel rooms, telephones, internet connections, etc. may be monitored, and personal possessions in hotel rooms may be searched without the owner's knowledge or consent.

The Judge's Analysis

The Judge concluded that, despite the language barrier, Applicant's family relations in China create a potential conflict of interest. The Judge stated that Applicant and his wife maintain an ongoing relationship with her family, the closeness of which is suggested by the loan Applicant's wife made to her nephew. The Judge concluded that Applicant's sense of obligation to his wife and her family is not minimal. She also noted evidence about Applicant and his wife's relationship with H and W, concluding that, given evidence that H works for the Chinese government, she could not rule out a risk of foreign influence arising from this relationship.

Discussion

Although he admitted the SOR allegations and agreed with the bulk of the Judge's findings, Applicant contends that the findings do not support the Judge's application of the disqualifying and mitigating conditions as well as her whole-person analysis. He cites to such things as the significant language barrier between Applicant and his in-laws and what he considers to be the infrequency of their direct contact. He also argues that Applicant's relationship with H and W is casual and infrequent. Applicant's argument is, in effect, a disagreement with the Judge's weighing of the evidence. Such a disagreement is not 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.15-07062 at 2 (App. Bd. Nov. 21, 2017). The evidence described above, viewed in its totality, supports the Judge's overall adverse conclusions.

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