

KEYWORD: Guideline B

DIGEST: The gravamen of these cases is not that the applicants are disloyal to the U.S. or that they are of bad character. Rather, it is that their circumstances are such that any reasonable person, should he encounter them, might find himself in a position in which he could seriously be tempted to place his loyalty to his family over his obligations to the U.S. Given the evidence, we find no reason to disturb the presumption of nexus between Applicant's family connections in China and his eligibility for a clearance. Adverse decision affirmed.

CASENO: 15-07068.a1

DATE: 09/07/2018

DATE: September 7, 2018

In Re:)	
)	
-----)	ISCR Case No. 15-07068
)	
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 June 2, 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 May 3, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel 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 works abroad for a Federal contractor. He came to the U.S. as a child, having been born in another country. He became a naturalized citizen a few years after arriving in the U.S. Applicant’s mother, siblings, and three children are citizens and residents of the U.S. He has held a clearance for many years.

In 2011, Applicant married a woman from China. She became a naturalized citizen a little over two years later. Applicant’s wife has an adult son who is a citizen and resident of China, as are her siblings. Applicant’s son works for a government entity. Both of Applicant’s parents-in-law are deceased. Applicant last traveled to China in late 2013 to visit his wife’s family. Applicant and his son-in-law share no common language and are not able to communicate directly with one another. Applicant’s wife maintains regular contact with her son and siblings. Applicant’s wife has filed a petition to sponsor her son’s immigration to the U.S.

Applicant’s wife owns real estate in China, two apartments valued together at about \$140,000. One of the apartments was purchased with the intention that it would be the couple’s primary residence. However, they eventually agreed to designate the U.S. as their residence, although their current living situation is unclear from the record. Applicant’s wife has an account in a Chinese bank valued at over \$10,000. He stated that his wife is divesting herself of her foreign financial interests, although he provided no corroboration. Applicant receives a pension from his previous civilian employment with the U.S. but provided no detailed information about his financial ties within the U.S.

China is among the most aggressive collectors of U.S. economic data and technology. It is the world’s most active perpetrator of economic espionage. Chinese efforts to collect U.S. technological and economic information are expected to continue to be a threat to this country’s economic security. China’s intelligence services, as well as private companies and other entities, often seek to exploit Chinese citizens or person with family ties to China.

The Judge’s Analysis

Though noting Applicant's lack of direct ties with his wife's Chinese relatives, the Judge concluded that his wife's ties to them and her financial interests in China create a potential conflict of interest between Applicant's obligation to protect classified information and his desire to help a foreign person, group, or government.

The Judge also concluded that Applicant had not mitigated the concern raised by his wife's Chinese relatives. She stated that the wife's ties within China may be as strong as Applicant's within the U.S., noting the couple's intent to use one of the apartments as a personal residence. She also noted her finding that there is little evidence in the record about Applicant's financial ties within the U.S. The Judge concluded that, based upon the record that was before her, she could not resolve all of the doubts raised by Applicant's connections within China.

Discussion

Applicant's brief includes matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. He has challenged some of the Judge's findings of fact. Among other things, he states that his wife's bank account in China is significantly less than the amount that the Judge found. He also denies that either of the apartments were intended to serve as a personal residence.

We note record evidence to the effect that his wife's bank account is now worth about \$5,000. Answer to SOR at 3. The Judge did not address this matter in her Decision. However, given the totality of the evidence, it is not likely that she would have arrived at a different conclusion had she addressed it. The finding that one of the apartments was purchased to serve as a residence for Applicant and his wife is supported by Applicant's security clearance interview summary. Item 4, Subject Interview, at 6 ("The residence at [address] was purchased . . . with the intention of maybe becoming their permanent residence but they decided to live in the United States"). We have considered the totality of Applicant's challenges to the Judge's findings. We conclude that the Judge's material findings of security concern are based upon substantial evidence or constitute reasonable inferences that could be drawn from the evidence. Applicant has cited to no harmful error in the Judge's findings. *See, e.g.*, ISCR Case No. 16-02640 at 3 (App. Bd. Jul. 2, 2018).

Applicant denies that his connections within China pose a security concern. However, 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." ISCR Case No. 14-03112 at 3 n.1 (App. Bd. Nov. 3, 2015). The relative obscurity of family members does not provide a meaningful measure of whether an applicant's circumstances pose a security risk. Moreover, there is a rational connection between an applicant's family ties in a country whose interest are adverse to the U.S. and the risk that the applicant might fail to protect and safeguard classified information. *See, e.g.*, ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017).¹

¹A clearance decision "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." *Department of the Navy v. Egan*, 484 U.S. 518, 528-529 (1988).

In this case, the Judge’s findings, and the evidence underlying those findings, show that (1) Applicant’s wife has close relatives, including a son, who are citizens and residents of China; (2) Applicant’s wife has financial interests in China; (3) Applicant’s wife speaks with her relatives regularly;² and (4) China is an aggressive collector of U.S. protected information, sometimes exerting pressure on those with family ties within China. Taken together, these findings and evidence support the Judge’s conclusion that Applicant could potentially be subject to a conflict between his fiduciary duty to protect classified information and his interest in protecting his family. Indeed, the Directive presumes that there is a nexus between admitted or proved conduct under any of the Guidelines and an applicant’s eligibility for a clearance. *See, e.g.*, ISCR Case No. 17-02595 at 3 (App. Bd. Jul. 31, 2018).

We note ISCR Case No. 09-07565 (App. Bd. Jul. 12, 2012), which concerned an applicant whose spouse was born in China. The applicant’s wife’s close relatives lived in China, and she spoke with them regularly. We stated as follows at p. 3:

Under the facts of this case, the evidence raises a reasonable concern that Applicant’s Chinese in-laws could come to the attention of the Chinese government and become a means through which that government might attempt to coerce Applicant into turning over classified information.

We conclude that Applicant’s situation is similar to that of the applicant in ISCR Case No. 09-07565. The gravamen of these cases is not that the applicants are disloyal to the U.S. or that they are of bad character. Rather, it is that their circumstances are such that any reasonable person, should he encounter them, might find himself in a position in which he could seriously be tempted to place his loyalty to his family over his obligations to the U.S. Given the evidence, we find no reason to disturb the presumption of nexus between Applicant’s family connections in China and his eligibility for a clearance.

The balance of Applicant’s brief is a challenge to the Judge’s weighing of the evidence. However, a party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-01181 at 4 (App. Bd. Apr. 30, 2018).

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse decision is sustainable on this record. “The general standard is that

²Applicant stated that his wife communicates with her son weekly, by email, texting, etc. Item 3, Security Clearance Application, at 42. We note Item 5, Request for Administrative Notice, at 6, which states that Chinese officials monitor electronic communications, such as telephone conversations, email messages, and text messages.

a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan* at 528. *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.