

person assessment; whether the Judge failed to consider a mitigating condition; and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the decision.

The Judge's Findings of Fact

Applicant is a 34-year-old employee of a defense contractor. He became a U.S. citizen in 1994 and earned a bachelor's degree and master's degree in the United States.

Applicant's wife was born in China and grew up there. She came to the United States in 2008 to pursue a master's degree. They married in early 2016¹ and reside together in the United States. She works for a U.S. corporation and frequently travels to China to perform work there. As part of her job, she deals with Chinese governmental and non-governmental entities. She recently applied for a green card to become a permanent resident alien, but has no plans to become a U.S. citizen. They recently purchased a home in the United States and plan to raise a family here.

Applicant's father-in-law and mother-in-law are citizens and residents of China. They own property in China. As their only children, Applicant's wife stands to inherit the property in China. Applicant's father-in-law is a general contractor for a U.S. company.² At one point, he was a member of the Communist Party, but no longer considers himself a part of it because he has not paid dues in 20 years. Applicant's mother-in-law is a homemaker. Applicant's wife communicates with her parents a few times a week.

The Judge's Analysis

Applicant's wife is a Chinese citizen, travels to China on a frequent basis, works directly with the Chinese government, and has no plans to become a U.S. citizen. She maintains regular contact with her parents, and her father was at one time a member of the Communist Party. These circumstances pose a potential threat to the United States. Under Guideline B, disqualifying

¹ The SOR alleged that Applicant's girlfriend is a citizen of China and her parents are citizens and residents of that country. At the time the SOR was issued, the Personnel Security Specialist who signed that document was apparently unaware of Applicant's marriage.

² The evidence reflects that Applicant's father-in-law is not a general contractor, but a general manager of a U.S. company's facility in China.

conditions 7(a),³ 7(b),⁴ and 7(d)⁵ apply.

The Judge concluded that mitigating condition 8(b)⁶ applied, but was not controlling because Applicant's wife could be a potential target for foreign influence. The Judge also stated:

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth above, when viewed under all of the guidelines as a whole supports a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, and unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.⁷

Discussion

A Judge is required to "examine the relevant data and articulate 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 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). "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b). The Appeal Board may reverse the Judge's decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law. Directive ¶¶ E3.1.32.3 and E3.1.33.3.

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to

³ Directive, Enclosure 2 ¶ 7(a) states, "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion[.]"

⁴ Directive, Enclosure 2 ¶ 7(b) states, "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligations to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information[.]"

⁵ Directive, Enclosure 2 ¶ 7(d) states, "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion[.]"

⁶ Directive, Enclosure 2 ¶ 8(b) states, "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[.]"

⁷ Decision at 7.

rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. “The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole.” *See, e.g.*, ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006).

In deciding whether the Judge’s rulings or conclusions are erroneous, we will review the Judge’s decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 14-02563 at 3 (App. Bd. Aug. 28, 2015).

Applicant contends the Judge committed harmful error in her whole-person analysis. Specifically, he argues that there is no evidence in the record supporting the Judge’s “whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, and unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.” In the appeal brief, Applicant points to numerous reference letters offered into evidence as well as the testimony of a supervisor that attest to his good character and professionalism. The substance of the reference letters and the supervisor’s testimony was not addressed in the Judge’s decision. Based on our review of the record, we found no evidence supporting the negative comments in the Judge’s whole-person assessment.⁸ Accordingly, we find the Judge committed harmful error by making a whole-person assessment that runs contrary to the record evidence.⁹

Applicant also contends that the Judge did not address mitigating condition 8(a)¹⁰ in her decision. Based on the record evidence, we agree with Applicant’s contention mitigating condition 8(a) should have been analyzed in this case. Applicant raised other appeal issues, but it would be premature to address those other issues at this time.

Applicant has demonstrated error that warrants remand. Pursuant to Directive ¶ E3.1.33.2., the Board remands the case to the Administrative Judge for the issuance of a new decision that corrects the errors identified above.

⁸ In his closing statement, Department Counsel referred to Applicant as “a young man of integrity.”

⁹ We note that the Judge has used the same language in another case (ISCR Case No. 15-04340 at 2-3 (App. Bd. Jan. 30, 2017)) where there was no evidence to support an adverse conclusion regarding Applicant’s candor.

¹⁰ Directive, Enclosure 2 ¶ 8(a) states, “the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.[.]”

Order

The Decision is **REMANDED**.

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