

KEYWORD: Guideline B

DIGEST: The Judge's material findings about Applicant's wife's green card status are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. Adverse decision affirmed.

CASENO: 17-02488.a1

DATE: 08/30/2018

DATE: August 30, 2018

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In Re:)	
)	
-----)	ISCR Case No. 17-02488
)	
)	
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 September 7, 2017, 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 hearing. On June 6, 2018, after the hearing, 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 issues on appeal: whether the Judge erred in her findings of fact 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 overseas and immigrated to the United States after completing two years of college. He completed his bachelor’s degree in the United States and became a U.S. citizen in 2004. He has worked overseas for the U.S. Government as a translator and interpreter. He met his wife, who is a citizen of China, while both of them were studying overseas. In 2014, he traveled to China to meet her parents who initially objected to their marriage because he is not Chinese. They married in the United States later that year. His wife applied for permanent U.S. residence status and a work permit. She was issued a temporary green card that expired in 2017. He stated that she has not renewed the card yet because it requires a lot of paperwork. She resided in the U.S. for about a year, but now resides with Applicant in a third country. She has traveled to China annually in the past four years. She intends to become a U.S. citizen. In 2015, they had a child.¹

Applicant has in-laws, who are citizens and residents of China; including his father-in-law, who sells equipment; mother-in-law, who is an agricultural worker; and brother-in-law, who is married and has children. His wife has other extended family members in China. She is close to her relatives. He communicates with his Chinese relatives through his wife and is attempting to learn their language. To his knowledge, none of his relatives are affiliated with the Government of China.

Except for a 401(k) account, Applicant has no assets in the United States. He provided letters from U.S. military personnel who consider him a dedicated professional.

¹ Applicant’s child is a U.S. citizen born abroad. *See*, Applicant’s SOR Response.

China is one of the most aggressive collectors of U.S. economic information and technology. China's intelligence services frequently seek to exploit Chinese citizens or persons with family ties to China who have insider access to corporate secrets. China has a large, professional cyber espionage community and uses its cyber capabilities to support intelligence collection against U.S. diplomatic, economic, and defense entities. Over the past 15 years, Chinese espionage against the United States has risen significantly. China is an authoritarian state with a wide variety of human rights violations.

The Judge's Analysis

Applicant's relationship with his wife and her relationship with family in China could create the risk of foreign influence or exploitation. His wife has spent minimal time living in the United States. Her ties to China are extensive. He has no assets, except a pension plan in the United States. Based on the facts in this case, "[i]t is too great of a burden to expect him to be loyal to the interests of the United States and resolve any conflicts in favor of the United States over those of his wife and in-laws in China." Decision at 9.

Discussion

Applicant's Counsel contends the Judge erroneously found that Applicant's wife has a temporary green card that expired in 2017 and was not renewed because it requires a lot of paperwork. In making his argument, Applicant's Counsel generally refers to Applicant's SOR Response and testimony, but does not identify any specific parts of the SOR Response or the hearing transcript that support his claim. Applicant's SOR Response contains a copy of his wife's green card that reflects she became a resident and the card expired in 2017. In testifying about his wife's efforts to obtain U.S. citizenship, Applicant stated:

[Applicant]: And the -- her green card is still temporary. So she would have to go through a long paperwork process to get some kind of permit to come to the U.S., because her first card has conditions and it expires in [month in 2017], two years, so it expired last [month in 2017].

We applied on time to remove the condition, but it takes a long time. So she has to -- we have to -- we will have to talk with the embassy and get some paperwork for her to even visit now. So that's also another --

[Judge]: So she doesn't --

[Applicant]: -- consideration.

[Judge]: -- so she doesn't have a green card at this point?

[Applicant]: She has -- she doesn't lose her status, but like, she has to get special paperwork, because her card is physically -- it says, expiration date is [month in] 2017, but the law provides that she does have the right to return.

She just has to do -- she has to do some paperwork and it's not -- it's a little complicated. So, when she -- but when they adjudicate her case, the first thing she will have to do is come to D.C. and pledge allegiance.²

From our review of the record, the Judge's material findings about Applicant's wife's green card status are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant's Counsel also argues that the Judge failed to consider all of the record evidence, mis-weighed 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. 17-00257 at 3 (App. Bd. Dec. 7, 2017). 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.* Furthermore, the cited case is easily distinguishable on its facts.

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**.

² Tr. at 84-85.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board