

KEYWORD: Guideline B

DIGEST: The Judge found that China has an authoritarian regime and actively collects military , economic, proprietary and industrial information about the U.S. The Judge found that Applicant sends her parents \$1000 to \$2000 a year. Applicant’s unhappiness with China’s conduct is not necessarily synonymous with ties to the United States, nor is it indicative of a history of compliance with security procedures and regulations in the context of dangerous high risk circumstances in which Applicant had made a significant contribution to national security.

CASENO: 06-18097.a1

DATE: 12/04/2007

DATE: December 4, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-18097
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Richard Murray, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 26, 2006, DOHA issued a statement of reasons 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 July 27, 2007, after the hearing, Administrative Judge Robert J. Tuider denied Applicant’s request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant alleges that the Judge erred by not applying Guideline B Mitigating Condition 8(b) in Applicant’s case. Applicant’s argument is unpersuasive.

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 choices 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 national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.

Once there has been a concern articulated regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance a security clearance. *See, Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9 Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the government presents evidence raising security concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions. *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* ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006).

In this case, the Judge wrote that Applicant has not demonstrated a “sufficient relationship and loyalty to the United States that she can be expected to resolve any conflict of interest in favor of the U.S.” In challenging that conclusion, Applicant relies on her (and her husband’s) acquisition of U.S. citizenship in response to the events in Tianamen Square.

The Judge’s conclusion is sustainable for three reasons:

The Judge found that China has an authoritarian regime, with a poor human rights record and practices arbitrary arrest and prisoner mistreatment. He also found that China aggressively competes with the United States and actively collects military, economic, proprietary and industrial information about the U.S. Given those findings there is a plausible concern that the presence of Applicant’s family members in China could present a security concern.

Applicant’s sense of obligation to her parents in China is substantiated without need to consider rebuttable presumptions. The Judge found that Applicant sends her parents \$1000 to \$2000 a year. Applicant’s husband sends his mother in China comparable amounts.

Applicant's unhappiness with China's conduct in the Tianamen Square events is not necessarily synonymous with ties to the United States. Nor is it indicative of a history of compliance with security procedures and regulations in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to national security. *Cf.* ISCR Case No. 04-02511 at 4 (App. Bd. Mar. 20, 2007).

Applicant also challenges the Judge's whole person analysis on analogous grounds. The reasoning above applies to that challenge.

Thus, the Administrative Judge did not err in denying Applicant a clearance.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairman, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board