

KEYWORD: Guideline B; Guideline C

DIGEST: The Judge concluded that in light of Applicant's family ties in Taiwan and his years living there after acquiring U.S. citizenship he had not met his burden of persuasion. Adverse decision affirmed.

CASENO: 06-21247.a1

DATE: 04/07/2008

DATE: April 7, 2008

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In Re: )	
)	
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)	
)	
Applicant for Security Clearance )	
_____ )	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Greg D. McCormack, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 31, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 3, 2007, after the hearing, Administrative Judge Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.<sup>1</sup>

Applicant raised the following issue on appeal: whether the Judge erred in failing to conclude that the Guideline B security concerns were mitigated. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an electrical engineer who works for a defense contractor. He was born in Taiwan and became a U.S. citizen in 1991. His father and mother are citizens and residents of Taiwan as are his siblings—two brothers and three sisters. The eldest of his sisters is a computer engineer for a cell phone company. The other two work for the Taiwanese equivalent of the IRS. Applicant speaks with his mother two or three times a year. In 1998 Applicant returned to Taiwan, living there until 2004 in order to look after his father, who was ill.

Taiwan is a multiparty democracy which is a trading partner of the U.S. In the past, Taiwan has utilized unlawful methods to obtain U.S. economic and intelligence information. However, in recent years Taiwan has taken “dramatic steps” to improve its human rights posture.

The Judge acknowledged Applicant’s appreciation of the U.S. and his sincere desire to remain here. However, she concluded that, in light of his family ties to Taiwan and the years he spent living there after becoming a U.S. citizen, Applicant had not met his burden of persuasion that it is “clearly consistent with the interests of the national security” for him to have a security clearance. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive ¶ E3.1.15. (After the government presents evidence raising security concerns, the burden shifts to the applicant to establish any appropriate mitigating conditions.) The Judge’s decision is not arbitrary, capricious, or contrary to law.

### **Order**

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin \_\_\_\_\_

Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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<sup>1</sup>The Judge’s favorable decision under SOR paragraphs 1(b) and 1(d) and under Guideline C is not at issue in this appeal.

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

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board