

KEYWORD: Guideline B

DIGEST: The Judge made no findings about the conditions in China, and does not adequately address the security concerns raised by Applicant's foreign relatives. Favorable decision remanded.

CASENO: 06-21622.a1

DATE: 10/15/2007

DATE: October 15, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-21622
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 18, 2006, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), pursuant to Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant

requested a hearing. On March 12, 2007, after the hearing, Administrative Judge Wilford H. Ross granted Applicant's request for a security clearance. Department Counsel submitted a timely appeal pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge's application of the pertinent mitigating conditions, as well as his whole person analysis, are arbitrary, capricious, and contrary to law. Finding error, we remand to the Judge.

The Judge made the following pertinent findings: Applicant emigrated from the People's Republic of China (PRC) in 1986 to pursue his education. He became a U.S. citizen in 1998 and his wife, also born in the PRC, became a U.S. citizen in 2004. The couple has one daughter, born in the U.S.

Applicant's brother and mother are U.S. citizens. His father is still a citizen of the PRC but resides with Applicant and is a permanent resident of the U.S. Applicant's parents-in-law are citizens of the PRC who reside there. They are retired, living on a pension from a non-government company. Applicant speaks with them once or twice a year.

Applicant has traveled four times to China, all for vacations. He has complied with his employer's reporting requirements for foreign travel.

Although Department Counsel has not explicitly challenged the Judge's findings, we conclude that such a challenge is implicit in Counsel's argument that the Judge did not properly analyze Applicant's case in light of the political conditions within the PRC. Insofar as the Judge made no findings at all about such conditions, his analysis erred in that he does not adequately address the security concerns raised by an Applicant's foreign relatives. *See* Directive ¶ E2.6. ("Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact . . . is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.")

We conclude that the best way to resolve this case is to remand it to the Judge for more complete factual findings and for analysis consistent with those findings. *See* ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007); ISCR Case No. 05-00939 at 3-4 (App. Bd. Mar. 14, 2007).

ORDER

The Judge's decision granting Applicant a security clearance is REMANDED.

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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

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