

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 28, 2007, DOHA 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 decision on the written record. On September 17, 2007, after considering the record, Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.¹

Applicant raised the following issue on appeal: whether the Judge’s adverse security clearance decision is arbitrary, capricious, and contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an employee of a defense contractor, holding a Ph.D. in electrical engineering. Applicant was born in the People’s Republic of China (PRC). Her husband is a citizen of the PRC living with her in the U.S. Her in-laws are citizens and residents of the PRC.

Applicant’s grandparents worked for the Chinese government before the Communist Revolution. Because of this, and because they were well off, Applicant “was marked since birth as the descendant of the ‘exploiting class,’ and was considered the target and enemy of the Communist Party.” Decision at 3. Applicant and her family were deprived of equal rights during the Cultural Revolution.

Applicant argues on appeal that the Judge failed to consider that she received an interim clearance in May 2006, which was granted in full knowledge of her foreign contacts. She states that this is a matter which should be considered on appeal. However, Applicant’s contentions do not overcome the rebuttable presumption that the Judge has considered all the evidence in the record. *See* ISCR Case 01-03357 at 4 (App. Bd. Dec. 13, 2005). In any event, a prior decision to grant an applicant access to classified information does not impair a Judge’s subsequent adverse determination. *See* ISCR Case No. 03-23190 at 4 (App. Bd. Jul. 12, 2007) (“The government is not estopped from making an adverse clearance decision when there were prior favorable determinations.”)

We have considered the Judge’s decision in light of the record as a whole. He gave favorable consideration to Applicant’s excellent work record, her education, her assets in the U.S., and her strong ties to this country. On the other hand he also noted the repressive nature of the PRC regime, the fact that it targets the U.S. for espionage, the fact that Applicant’s family has been targeted by the regime in the past, and the fact that Applicant has close family members who are citizens of the PRC. The Judge concluded that Applicant had not met her burden of persuasion that the security concerns in her case had been mitigated, in view of the potential for Applicant’s foreign relatives to become a means through which Applicant could be placed in a position of having to choose between the interests of the U.S. and the PRC. *See* Directive ¶¶ E3.1.15, 8(a). The Board concludes that the Judge has drawn “a rational connection between the facts found” and his ultimate adverse decision. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). Accordingly, the Board holds that this decision is neither arbitrary, capricious, nor contrary to law.

¹The Judge’s favorable decision under SOR paragraphs 1(b) and 1(d) are not at issue in this appeal.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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

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