

KEYWORD: Guideline B

DIGEST: Judge concluded that Applicant’s foreign relatives created a heightened risk of exploitation which Applicant failed to mitigate. Adverse decision affirmed.

CASENO: 08-09338

DATE: 11/02/2009

DATE: November 2, 2009

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In Re:)	
)	
-----)	ISCR Case No. 08-09338
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On February 10, 2009, 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 hearing. On September 8, 2009, after the hearing, Administrative Judge Michael H. Leonard 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’s whole-person analysis is erroneous and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant is a systems engineer for a federal contractor. He earned a Ph.D. from a U.S. university. He has been a U.S. citizen since the early 2000s, as has his wife. His parents are citizens and residents of China.¹ Applicant has regular contact with them by means of the telephone. He also has a sister who is a citizen and resident of China.

The Judge noted evidence favorable to Applicant, deciding for him on four of the six SOR allegations. However, he reasonably explained why Applicant's parents and sister created a "heightened risk"² of exploitation which the record as a whole was not sufficient to mitigate. Decision at 9. After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made,'" both as to the mitigating conditions and the whole-person factors. *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 Judge's decision that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 10. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'").

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

¹People's Republic of China.

²*See* Directive ¶ E2.7(a): "[C]ontact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion[.]"