

KEYWORD: Guideline C; Guideline B

DIGEST: Applicant failed to mitigate trustworthiness concerns arising from the presence of her relatives in Taiwan. Disagreement with a Judge’s decision is not sufficient to demonstrate that the Judge mis-weighed the record evidence. Adverse decision affirmed.

CASENO: 09-02907.a1

DATE: 03/31/2010

DATE: March 31, 2010

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In Re:)	
)	
-----)	ADP Case No. 09-02907
)	
Applicant for Public Trust Position)	
)	

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 trustworthiness designation. On August 24, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 4, 2010, after the hearing, Administrative Judge Mark Harvey denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge mis-weighed the record evidence and whether the Judge's adverse trustworthiness designation is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following relevant findings: Applicant was born in Taiwan, moving to the U.S. in the mid-1980s. She became a U.S. citizen in the late 1990s. Applicant has five siblings who are citizens and residents of Taiwan. Recently, Applicant's father died, and she and her siblings embarked upon a protracted disagreement as to the amount of her father's estate that Applicant should receive. The dispute became contentious, and at least two siblings have threatened Applicant. One of them, B, has a history of financial problems. He left a voice message on Applicant's telephone threatening to kill her and her husband if she did not relinquish her share of their father's estate.

Taiwan is a multi-party democracy. It engaged in industrial espionage in the 1990s. There have also been more recent efforts by Taiwan to obtain protected information and some evidence that Taiwan has targeted U.S. citizens to that end.

The Judge took into account record evidence favorable to Applicant, and resolved several of the allegations in her favor. However, he also noted evidence which was less favorable to Applicant's goal of receiving a trustworthiness designation. He noted that Applicant has frequent communications with one of her siblings. He also stated that there is a risk that Taiwanese intelligence agencies could attempt to induce cooperation with their efforts to obtain U.S. protected information. Applicant has not demonstrated that the Judge's weighing of the evidence was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 06-14978 at 2 (App. Bd. Jan. 18, 2008).

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.'" *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 adverse decision is sustainable on this record.

Order

The Judge's adverse trustworthiness designation is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, 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