

KEYWORD: Guideline B; Guideline C

DIGEST: The Judge focused on a tapestry of factors including Applicant's relatives in Taiwan, her exercise of Taiwanese citizenship after acquiring US citizenship and the extent to which common culture could be a basis for foreign influence. The Judge did not appear to rely on the Chinese character of the culture. As to Applicant's arguments regarding her brother-in-law's security clearance, each case must be decided on its own merits. Adverse decision affirmed.

CASENO: 09-04216.a1

DATE: 01/31/2011

DATE: January 31, 2011

In Re:)
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 -----) ISCR Case No. 09-04216
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 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Michael Orr, Personal Representative

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 17, 2009, 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 October 29, 2010, after the hearing, Administrative Judge John Grattan Metz, Jr., 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 mis-weighed the record evidence; whether Applicant was subjected to disparate treatment; and whether the Judge’s adverse security clearance decision is arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

Facts

The Judge found that Applicant was born in Taiwan and attended high school there. She got married in the mid-1970s and divorced after she came to the U.S. in the early 1980s. She became a naturalized U.S. citizen in the early 1990s.

She held a Taiwanese passport prior to becoming a U.S. citizen but renewed it after having done so. She traveled to Taiwan with that passport 14 times during a period of four years. She most recently renewed the passport in the late 2000s, though she has since surrendered it to her employer’s security officer.

Applicant’s parents, adopted children, and three siblings are residents and citizens of Taiwan. One sibling is retired from the Taiwanese military and now works for a government-funded institute.¹ None of her other relatives work for the government of Taiwan. She has a cousin who is a citizen of Taiwan but resides in the People’s Republic of China (PRC). She has another sibling who is a dual citizen of Taiwan and the U.S., living in this country.

Applicant’s adopted children are her biological nephews. She adopted them after their biological father was rendered unable to care for them due to a motorcycle accident. Normally under Chinese custom a male sibling would care for these children. However, a “family conclave” decided that Applicant should do so.

Applicant purchased an apartment in Taiwan and has a bank account there. Her foreign property was necessary in order for her to adopt her nephews. Applicant’s parents, her sons, and her disabled brother live in the apartment. Applicant pays the utility bills and sends her sibling money for groceries and other expenses. Except for her Taiwanese bank account, which she uses to pay for upkeep on her apartment, all of Applicant’s financial accounts are in the U.S.

¹“Q: . . . [I]s this a government-run institute of science? A: It’s basically like a naval research laboratory. It’s kind of quasi-government, quasi-civilian.” Tr. at 47.

After becoming a U.S. citizen, Applicant voted in a Taiwanese election. She did so at the urging of her father. Applicant enjoys an excellent reputation for honesty, trustworthiness, and job performance.

Taiwan is an active collector of industrial information and engages in industrial espionage, though the record does not state that it targets protected U.S. information. PRC intelligence services are active in Taiwan. The PRC targets U.S. information and operates against its citizens in the U.S. and elsewhere.

Discussion

Applicant contends that the Government has not demonstrated that her family circumstances create a heightened risk of foreign exploitation. *See* Directive, Enclosure 2 ¶ 7(a).² The Directive does not require affirmative proof that a country specifically targets U.S. citizens or specific members of an applicant's family. Rather, it addresses the nature and extent of an applicant's contacts within a foreign country. *See, e.g.*, ISCR Case No. 08-09211 at 3-4 (App. Bd. Jan. 21, 2010); ISCR Case No. 08-04488 at 4 (App. Bd. Apr. 23, 2009). In this case, the Judge's findings that (1) Applicant has numerous close family members in Taiwan; (2) Taiwan engages in industrial espionage; and (3) PRC intelligence operatives are active in Taiwan, are sufficient to satisfy the requirements of 7(a).

Applicant contends that the Judge erred in concluding that her devotion to her family serves as a basis for possible foreign influence. She notes, *inter alia*, his conclusion that "she is subject to influence by her family through their shared values of Chinese culture and custom." Decision at 5. She argues that familial concern is not unique to Chinese culture. However, the Judge's decision, viewed as a whole, focused on a tapestry of factors, including Applicant's relatives living in Taiwan, her exercise of Taiwanese citizenship after acquiring U.S. citizenship, and the extent to which Applicant's and her Taiwanese family members' common culture could be a basis for foreign influence. Thus, the Judge did not appear to rely upon the specifically Chinese character of that culture considered in and of itself. We find no reason to conclude that the Judge mis-weighed the record evidence or that he drew conclusions that were not supported by the evidence.

Applicant points to record evidence that her brother-in-law, who shares some family circumstances with her, holds a security clearance through another Government agency, suggesting that she has been treated in an unjustly different manner from him. However, each case must be decided on its own merits. *See* Directive, Enclosure 2 ¶ 2(b). "An applicant's suitability for a security clearance is not increased or decreased based on how the cases of other applicants are being processed or handled." ISCR Case No. 99-0481 at 4 (App. Bd. Nov. 29, 2000).

²"[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[.]"

To sum up, the Judge’s findings that (1) Applicant has numerous close relatives in Taiwan; (2) she has held and used a Taiwanese passport since becoming a U.S. citizen; (3) she has voted in Taiwanese elections; (4) she owns property in Taiwan; and (5) PRC intelligence operatives work in Taiwan, collectively support the Judge’s adverse decision under both Guideline B and Guideline C. The Judge’s adverse decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

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