

KEYWORD: Guideline B; Guideline F; Guideline E

DIGEST: The Directive presumes a nexus between proven conduct under any Guideline and an applicant's security eligibility. A clearance adjudication may be based on circumstances unrelated to conduct, such as the foreign residence of an applicant's relatives.

CASE NO: 09-07565.a1

DATE: 07/12/2012

DATE: July 12, 2012

In Re:)	
)	
-----)	ISCR Case No. 09-07565
)	
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. DOHA issued an undated statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 27, 2012, after the hearing, Administrative Judge Joan Caton Anthony denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline F are not at issue in this appeal. In addition, at the hearing and prior to the taking

of evidence, the Government moved to withdraw the sole allegation addressed under Guideline E. The Judge granted this motion. Decision at 2. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant is a native-born U.S. citizen. He works for a Government contractor. He served in the U.S. military from 1982 until 1990.

Applicant's wife was born and raised in China. She came to the U.S. in the early 1990s and earned two master's degrees. She did some work toward a Ph.D., but she did not take the degree. She became a U.S. citizen in the mid-2000s. She has visited China only once since coming to the U.S. in the early 1990s, and she used a U.S. passport when she did so.

Applicant's parents-in-law are citizens and residents of China. They visited the U.S. once, in the late 1990s. Applicant's wife has two siblings, two siblings-in-law, and an uncle who are citizens and residents of China. The uncle works for a provincial government. Applicant's wife speaks with her parents by telephone once a week. She also speaks with her parents and sisters on holidays, and she communicates with her sisters by e-mail.

China is the most aggressive country conducting espionage against the U.S. It focuses its attention on acquiring information and technology useful to the development of its military capacity and its economy. There are several agencies of the Chinese government engaged in efforts to obtain U.S. technology. Moreover, China rewards the actions of private citizens who obtain technology for it, and officials of the Chinese government offer financial incentives to U.S. Government officials to encourage them to provide classified information. China targets not only U.S. citizens of Chinese background, but others as well. China has a poor human rights record, engaging in arbitrary arrest and detention, searches without warrants, and monitoring of private communications, including telephone conversations, text messaging, and e-mail traffic.

In the Analysis, the Judge entered favorable formal findings regarding the Guideline F allegations. However, she concluded that Applicant's family connections with China raised security concerns. She stated that Applicant had done nothing to rebut the presumption that a person has ties of affection and obligation to the family members of his or her spouse, and that Applicant's wife's relations with her Chinese family create a "heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Decision at 8. *See* Directive, Enclosure 2 ¶ 7(a). She concluded that these family relations could pose a risk of a conflict of interest for Applicant between his "obligation to protect sensitive information or technology and [his] desire to help" his in-laws. Decision at 9. *See* Directive, Enclosure 2 ¶ 7(b). She also concluded that Applicant's marital circumstances themselves raised a security concern.¹

¹Directive, Enclosure 2 ¶ 7(d): "sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion[.]"

In evaluating Applicant's case for mitigation, the Judge concluded that his wife's frequent contact with her parents and siblings in China precluded full application of Foreign Influence Mitigating Conditions (FIMC) 8(a)² and 8(c).³ She stated that a country with China's poor human rights record makes it more likely that China might attempt to coerce Applicant through his in-laws, placing him in a conflict of interest between their interests and his obligation to protect classified information. She concluded that Applicant had failed to show that his circumstances met the criteria of FIMC 8(b).⁴ She therefore concluded that Applicant had failed to mitigate the security concerns arising from his foreign in-laws.

Applicant contends that the Judge erred in concluding that his circumstances raised security concerns under Guideline B. He states that there was no evidence in the record to show that he had compromised classified or sensitive information. We construe this to be an argument that there is no nexus between his circumstances and the Guideline B security concern.

As a general matter, the Government is not required to provide direct evidence of a nexus between an applicant's circumstances and the pertinent security concern. *See, e.g.*, ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011). The Directive presumes a nexus or rational connection between proven conduct under any Guideline and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 07-05795 at 2 (App. Bd. Jul. 15, 2008). We note the Judge's findings, as follows: (1) Applicant is married to a spouse born in China; (2) Applicant's wife's parents and siblings live in China and are residents of that country; (3) Applicant's wife speaks with her parents weekly by telephone; (4) China monitors telecommunications, such as telephone conversations, e-mail traffic, and text messaging; (5) China is the world's most avid collector of U.S. technology and related information. We also note the Judge's conclusion that Applicant had done nothing to rebut the presumption that he has ties of affection for, or obligation to, the immediate family members of his spouse. (*See, e.g.*, ISCR Case No. 10-09986 at 3, *supra.*) As the Supreme Court stated in *Department of the Navy v. Egan*, 484 U.S. 518, 528-529 (1988), a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, such as the foreign residence of an applicant's close relatives. Under the facts of this case, the evidence raises a reasonable concern that Applicant's Chinese in-laws could come to the attention of the Chinese government and become a means through which that government might attempt to coerce Applicant into turning over classified information. The Judge's conclusion that Applicant's circumstances raised Guideline B security concerns is sustainable.

²Directive, Enclosure 2 ¶ 8(a): "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual . . . and the interests of the U.S."

³Directive, Enclosure 2 ¶ 8(c): "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation[.]"

⁴Directive, Enclosure 2 ¶ 8(b): "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person . . . is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest[.]"

The record supports a conclusion 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. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Egan, supra*, at 528. *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

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