KEYWORD: Guideline B; Guideline C

DIGEST: Applicant has worked in Iraq for many years in support of U.S. objectives. In the mid-2000s, her family was threatened with death unless Applicant and her siblings quit their jobs. Two of Applicant's siblings engaged in numerous actions harmful to U.S. interests, whether in response to this letter or not. Applicant's relationship with them, even if broken off after receipt of the SOR, suggests that she could come to the attention of persons hostile to the U.S., as she already did in the recent past. Most significantly, she has an immediate family relationship with two persons who have engaged in actions hostile to U.S. interests. As noted above, the Judge failed to evaluate Applicant's case in light of Disqualifying Condition 7(d). Favorable decision reversed.

CASE NO: 17-01981.a1

DATE: 12/17/2019

DATE: December 17, 2019

In Re:	)	
	)	
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	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Erin P. Thompson, Esq., Department Counsel

FOR APPLICANT
Mark A. Myers, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 18, 2017, DoD 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 August 21, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip J. Katauskas granted Applicant's request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge failed properly to apply the Guideline B disqualifying conditions and whether the Judge's favorable decision under Guideline B was unsupported by the greater weight of the record evidence and, therefore, was arbitrary, capricious, or contrary to law. Department Counsel raised no issues regarding the concern alleged under Guideline C. Consistent with the following, we reverse.

The Judge's Findings of Fact

Applicant was born in Iraq, came to the U.S. in the mid-2000s, and became a naturalized U.S. citizen in about 2013. Applicant has worked for Defense contractors since 2003, except for several months between 2014 and 2016. Divorced, she has a child. Though currently employed by a Defense contractor, Applicant has enlisted in the U.S. military.

Applicant has close family members who are citizens and residents of Iraq–her mother and several siblings. Applicant claimed that she broke off contact with her Iraqi family in late 2017, after she received the SOR. She also testified that she broke off contact with her mother because she was upset over having not been informed about her father's death.

Two of Applicant's siblings also worked with U.S. forces in Iraq. Two SOR allegations were based upon a report by a U.S. military service intelligence command, stating that these two siblings had cooperated with forces opposed to the U.S. and its allies. Applicant testified that she was not aware of these allegations and hoped that they were not true.

Applicant has no financial interests in Iraq. She has checking and savings accounts in the U.S. and has expressed a willingness to renounce any dual citizenship that she has with any foreign country. Applicant enjoys an excellent reputation for the quality of her duty performance, and her supervisors describe her as loyal, honest, and trustworthy. She is described as exceeding expectations in the accomplishment of her duties.

Numerous terrorist groups operate within Iraq, although Iraqi forces have enjoyed success recently in retaking territory previously held by the Islamic State of Iraq and Syria (ISIS). Nevertheless, there is a security vacuum in parts of Iraq. Anti-U.S. sectarian militias may threaten U.S. citizens in Iraq, and the U.S. requires Government personnel to live and work under strict security guidelines. ISIS has committed numerous human rights abuses, and sectarian hostility has

weakened the Iraqi government's authority.

The Judge's Analysis

The Judge found that Disqualifying Conditions 7(a) and (b)[1] apply to Applicant's circumstances. In concluding that Applicant had succeeded in mitigating these concerns, the Judge cited to Applicant's limited contact with her family during deployments, her evidence that she ceased all communications with her family after having received the SOR, that she has no financial interests in Iraq, and that her Iraqi family members do not know what she does for a living or where she lives. He found credible Applicant's testimony that she did not know about her siblings' cooperation with forces opposed to U.S. interests, noting that the intelligence finding is more than ten years old. The Judge also relied upon Applicant's character references and her long history of support for U.S. policy objectives. The Judge further cited to Applicant's years of support of the U.S. and her stated intent to renounce any dual citizenship that she holds.

Discussion

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991). The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate admitted or proven facts. The applicant has the burden of persuasion as to obtaining a favorable decision. Directive ¶ E3.1.15. The standard applicable in security clearance decisions "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Directive, Encl. 2, App. A ¶ 2(b).

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See, e.g.*, ISCR Case No. 14-02563 at 3-4 (App. Bd. Aug. 28, 2015).

In Foreign Influence cases, the nature of the foreign government involved, its human rights record, and the presence of terrorist activity are important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case.

[1]Directive, Encl. 2, App. A ¶¶ 7(a) and (b): "contact . . . 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;" and "connections to a foreign person . . . that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology[.]"

See, *e.g.*, ISCR Case No. 17-04208 at 4 (App. Bd. Aug. 7, 2019). Even a person of the highest character can experience circumstances under which he or she could be tempted to place the well-being of foreign relatives over the interests of the U.S. *Id*. at 5.

Department Counsel argues that the Judge failed properly to apply the disqualifying conditions. She argues that the Judge should have applied Disqualifying Condition 7(d) ("counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information . . . may involve unacceptable risk to national security.")[2]

We find this argument to be persuasive. Judges have wide latitude in how they write decisions, and they are not expected to discuss every piece of record evidence or each of the various disqualifying or mitigating conditions. *See, e.g.*, ISCR Case No. 16-02243 at 3 (App. Bd. Nov. 30, 2018); ISCR Case No. 17-02236 at 2 (App. Bd. Jul. 2, 2018). However, a Judge should apply the adjudicative criteria that are fairly raised by the record evidence. In this case, the record contains a declassified document prepared by intelligence officials working for a military department. This exhibit shows that Applicant's siblings, who were working with U.S. forces in Iraq, were found to have been actively cooperating with persons in Iraq who were hostile to U.S. interests. Moreover, the evidence shows that Applicant maintained regular contact with these siblings until the end of 2017, when she received the SOR. Taken together, this intelligence report and evidence of her contact with her siblings are sufficient to raise a concern that Applicant's siblings could be a means through which Applicant comes to the attention of those interested in obtaining access to U.S. classified information, thereby entailing an unacceptable risk to national security. We conclude that the evidence discussed above satisfies the criteria of Disqualifying Condition 7(d) and that the Judge erred by not evaluating Applicant's circumstances and her case for mitigation in light of it.

Department Counsel argues that the Judge's decision fails to consider significant record evidence and runs counter to any reasonable interpretation of the evidence. We find this argument to be persuasive. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 18-01482 at 2 (App. Bd. Sep. 6, 2019). However, the Judge cannot ignore, disregard, or fail to discuss record evidence that a reasonable person could expect to be taken into account in reaching a fair and reasoned decision. *See, e.g.*, ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017).

We note the following, drawn from the record and from the Judge's findings:

Applicant began working for Defense contractor overseas in 2003. At least one of her siblings also began working with the U.S. military in that year. Decision at 2; Applicant Exhibit (AE) I.

In about 2005, Applicant's family in Iraq received a letter stating that "they knew that we are working and supporting the [U.S.] military and if we don't quit our job that they will burn our house

[2]Directive, Encl. 2, App. A ¶ 7(d).

and kill the rest of my family." AE I.

At least by the mid-2000s, two of Applicant's siblings were working in support of U.S. objectives in Iraq. An intelligence investigation uncovered information that these two siblings were in fact cooperating with forces opposed to the U.S. and other coalition members. Government Exhibit (GE) 4, Summary of Information, dated May 7, 2009.

This investigation concluded that one of the siblings had a relationship with an opposing militia leader and provided information about an upcoming military operation. This resulted in the "killing of innocent people." GE 4.

This sibling also threatened other contractor personnel with "retribution" by militia forces when they disagreed with the sibling. GE 4.

The two siblings "maintained extensive contacts with numerous anti-Coalition and other nefarious personnel, to include Al-Qaeda in Iraq (AQI) financiers, IED [improvised explosive devices] manufacturers, kidnappers, drug smugglers, weapons dealers, . . . and individuals wanted by intelligence organizations of other countries." GE 4.

One of the siblings received a text message from a contact saved within her phone's address book. This message identified a named person as "a spy for the Americans." GE 4.

One sibling's activity included the possession in living quarters of prohibited communications devices, such as a laptop computer, cell phone, and IPOD. GE 4.

When queried, the siblings denied any improper activity. Intelligence officials found their denials to be contradicted by their own statements and by other evidence. GE 4.

The intelligence investigation concluded that Applicant's two siblings were "serious force protection and security risks to the U.S. or Coalition personnel and installations." GE 4.

Applicant performs her official duties in Iraq, spending most of her time in that country. In 2016 and 2017 she spent 11 months there. Decision at 3; Tr. at 40-41.

Applicant made inconsistent statements about how frequently she contacted her mother before receipt of the SOR. In her 2016 Security Clearance Application (SCA), she stated that she spoke with her mother every day. However, at the hearing, she testified that it had been much less, about every three months. SCA at 32; Tr. at 28. She also made inconsistent statements about the reasons that her siblings left their employment. In AE I, she stated that they quit the job because of jealousy from co-workers. However, at the hearing, she testified that the siblings were laid off. Tr. at 63-64.

Forces hostile to U.S. interests operate within Iraq. These include sectarian militias and ISIS. ISIS has committed numerous human rights abuses, including violence on a mass scale. These

forces pose a clear danger to U.S. citizens in Iraq. Decision at 5-6.

As Department Counsel notes, there are significant omissions from the Judge's findings and analysis. For example, the Judge made no findings at all about the threatening letter that Applicant's family received as she was working in support of the U.S. military. Clearly, an applicant who has already been identified and threatened, possibly by a terrorist organization, is someone who may well encounter such threats in the future and thereby be pressured to compromise national security information. *See, e.g.*, ISCR Case No. 17-02862 at 4 (App. Bd. May 22, 2018). This evidence, which is contained in one of Applicant's own exhibits, is something that a reasonable person would likely expect the Judge to have addressed explicitly in the context of Applicant's case for mitigation, and his failure to have done so undermines his favorable analysis.

Additionally, the Judge made no findings about the substance of GE 4, with its many detailed factual conclusions drawn from the intelligence investigation of Applicant's siblings. In fact, his treatment of this matter consisted of finding credible Applicant's testimony that she was not aware of her siblings' conduct and that these activities occurred over ten years ago. However, as Department Counsel argues, the security concern in this case arises not from Applicant's knowledge of her siblings' misconduct. Rather, it arises from evidence that two close relatives, with whom Applicant spoke frequently apparently up until the end of 2017, provided protected information to forces opposed to the U.S., threatened other contract employees, possessed unauthorized electronic communication media in their private quarters, and gave deceptive answers about these matters when questioned by intelligence personnel. Applicant's frequent contact with her siblings over a course of years suggests that her relationship with them could be a means through which she comes to the attention of hostile persons, including those interested in acquiring U.S. protected information, even as she came to the attention of persons of this sort in the past. Indeed, Applicant's siblings are themselves parties who have been found hostile to the U.S. and with whom Applicant has an ongoing familial relationship. Moreover, the Judge's favorable credibility determination is impaired by Applicant's inconsistent statements. *See, e.g.*, ISCR Case No. 15-03778 at 3 (App. Bd. Aug. 4, 2017). The Judge's analysis, therefore, fails to address in a meaningful way record evidence that entails significant security concerns and is sufficient to raise serious doubts about her susceptibility to pressure, coercion, or duress. Even without reference to the Judge's failure to have applied Disqualifying Condition 7(d), this evidence suggests a real possibility that Applicant could be pressured to choose foreign interests over those of the U.S. or experience a conflict of interest.

In summary, Applicant has worked in Iraq for many years in support of U.S. objectives. In the mid-2000s, her family was threatened with death unless Applicant and her siblings quit their jobs. Two of Applicant's siblings engaged in numerous actions harmful to U.S. interests, whether in response to this letter or not. Applicant's relationship with them, even if broken off after receipt of the SOR, suggests that she could come to the attention of persons hostile to the U.S., as she already did in the recent past. Most significantly, she has an immediate family relationship with two persons who have engaged in actions hostile to U.S. interests. As noted above, the Judge failed to evaluate Applicant's case in light of Disqualifying Condition 7(d). However, even under the Disqualifying Conditions that he did examine, Applicant's evidence that she was unaware of her siblings' clandestine activities; that she hopes the investigative findings about them are not true; that

she no longer speaks with them; and her excellent duty performance are not enough to mitigate a concern that, once again, Applicant's service to the U.S. could become known to hostile parties and that she or her family could be subjected to threats in an effort to obtain U.S. classified or protected information.

We conclude that the Judge's favorable decision fails to consider important aspects of the case and runs contrary to the record evidence. After considering the record as a whole, we conclude that the Judge's favorable decision is not sustainable.

Order

The Decision is **REVERSED**.

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

Signed: Charles C. Hale
Charles C. Hale
Administrative Judge
Member, Appeal Board