

KEYWORD: Guideline B

DIGEST: Applicant's arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision is affirmed.

CASE NO: 19-01046.a1

DATE: 08/12/2020

DATE: August 12, 2020

_____)	
In Re:)	
)	
-----)	ISCR Case No. 19-01046
)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Brittany D. Honeycutt, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 15, 2019, DoD 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 May 20, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant, who is in his late 40s, was born and educated in Iraq. In the mid-2000s, he left Iraq for a few months because he was warned that a militia was targeting him. About two years later, he left Iraq again and then lived in a couple of Middle Eastern countries before immigrating to the United States in the late 2000s. He became a U.S. citizen about six years ago. About three years ago, he traveled to Iraq on an Iraqi passport to marry an Iraqi woman. She is now a permanent U.S. resident. They have a child who was born in the United States. He has relinquished his Iraqi passport and expressed a willingness to renounce his Iraqi citizenship.

Applicant’s parents and one sibling are naturalized U.S. citizens. His father is a retired Iraqi Government official. His parents left Iraq to avoid risks coming from a prior regime. He has two other siblings who reside in the U.S. but have not yet become U.S. permanent residents.

The SOR alleged that Applicant has family and associates who are citizens and residents of Iraq. They include his wife, mother-in-law, father-in-law who is a former senior official in the Iraqi Government, two siblings-in-law, and extended family members and associates, some of whom either are serving or have served in the Iraqi Government or military. In responding to the SOR, he admitted all of the allegations with explanations. One of his associates is a retired pilot in the Iraqi air force. Applicant indicated that he has ended all contact with extended family members and associates in 2018 due to security concerns arising from his employment in support of the U.S. military.

Instability persists in parts of Iraq. Terrorist groups, insurgents, and militias fuel these conditions. U.S. citizens are at high risk of kidnaping and terrorist violence in Iraq. Widespread corruption and significant human rights violations also occur there.

Applicant has numerous relatives in Iraq, some of whom have connections to the Iraqi Government. His relationships in Iraq are not casual. His wife has regular contact with her parents and siblings. Despite his claim that he does not have contact with his wife’s family, Applicant has not rebutted the presumption that he has a close relationship to them. He has experienced threats of physical violence from factions in Iraq. “Although his sense of loyalty to the United States is

significant, that information is not sufficient to outweigh the heightened risk of coercion presented by the presence of his extended family, his wife’s family, and other associates in Iraq.” Decision at 7-8. The Judge found in favor of Applicant on the allegation concerning his wife and against him on the other allegations.

Discussion

In his appeal brief, Applicant contends the Judge did not consider all of the evidence, misweighed the evidence, and did not properly apply the mitigating conditions and whole-person concept. In his arguments, he highlights, for example, that he has not spoken to his extended family in Iraq since 2018, that he has relinquished his Iraqi passport, that he renounced his Iraqi citizenship,¹ and that he has earned a master’s degree from a university in the United States. The Judge, however, addressed most of those matters in his decision. Applicant’s arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-01717 at 4 (App. Bd. Jul. 3, 2017). We give due consideration to the Hearing Office cases that Applicant has cited in support of his arguments, but they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *Id.* We further conclude the Judge considered the totality of the evidence in compliance with the whole-person analysis requirements. *See* Directive, Encl. 2, App. A ¶¶ 2(a) and 2(d).

Applicant has failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The 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). *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.”

¹ When asked at the hearing if he had a valid Iraqi passport, Applicant stated, “I renounced it, sir.” Tr. at 26. When questioned about how he renounced his Iraqi citizenship during cross-examination, he stated that he turned over his Iraqi passport to his facility security officer. Tr. at 45-46. No proof was offered that Applicant renounced his Iraqi citizenship before Iraqi Government officials.

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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