

Date: July 6, 2022

In the matter of:)	
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-----)	ISCR Case No. 21-00068
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 28, 2021, 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 April 21, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason 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’s 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 mid-thirties, was born in Iraq. He came to the U.S. about ten years ago and was naturalized a U.S. citizen about five years later. In 2018, he was hired by a Defense contractor and expects to deploy after his clearance is approved. Applicant has worked for Defense contractors in the past, and he has also experienced periods of unemployment. During one such period he made six foreign trips, four of which were to Iraq that lasted more than 30 days each.

Applicant has numerous relatives and friends who are residents and/or citizens of Iraq. These include his mother, who lives in Iraq with three of Applicant's siblings. Applicant speaks with them weekly. He has other siblings who live in Iraq. They are married and live separately from their mother, and Applicant has weekly contact with them. Applicant has another sibling who lives in a European country with whom he maintains weekly contact, either by phone or social media. In addition to these close relatives, Applicant has numerous Iraqi cousins and friends with whom he maintains regular contact. These include a cousin who is employed in law enforcement, another cousin employed in a governmental capacity, and a friend from childhood who works for an Iraqi government ministry. Applicant contacts these persons on a weekly or monthly basis. Applicant has sent funds to his relatives and friends from time to time. He provides \$10,000 to his mother annually, and he has given money to other relatives and friends in amounts ranging from about \$200 to about \$2,500. During his 2018 security clearance interview, he disclosed that he had given at least \$34,200 to his Iraqi contacts. Applicant has no property or financial interests in Iraq. On the other hand, he owns no real estate in the U.S., although he has about \$20,000 in a savings account.

Applicant enjoys an excellent reputation for the quality of his prior work for DoD contractors. A letter from a military official advised "that Applicant risked his life on numerous occasions in patrols and forays with coalition forces." Decision at 7. He has also been commended for his loyalty, honesty, and capable performance of duty.

Human rights problems are widespread in Iraq, such as arbitrary arrest, limitations on freedom of speech and assembly, and discrimination based on gender, race, and religion. The U.S. State Department warns that U.S. citizens living in Iraq are at high risk for kidnapping and terrorist violence. These threats are sufficiently grave as to require U.S. Government personnel to live and work under strict security guidelines.

The Judge concluded that Applicant's trips to Iraq, his frequent contact with foreign relatives and friends, and his financial support for them pose a "heightened risk" of foreign exploitation as well as a potential conflict of interest between Applicant's desire to assist his Iraqi connections and his obligation to protect classified information. *See Directive, Encl. 2, App. A ¶¶ 7(a) and (b).* In evaluating Applicant's evidence in mitigation, the Judge stated that Applicant's prior work in support of U.S. objectives "weighs in his favor." Decision at 11. However, he concluded that the nature and extent of Applicant's foreign contacts raise a real possibility that he could come to the attention of forces interested in obtaining access to U.S. classified information and subjected to pressure. The Judge also concluded that Applicant's ties within the U.S. are not so significant as to outweigh his ties within Iraq. In his whole-person analysis the Judge noted Applicant's service to the U.S., which he characterized as "outstanding." Decision at 12.

However, he reiterated that Applicant's Iraqi family members and friends, with whom he maintains frequent contact, entail a heightened risk of coercion that his evidence is not sufficient to mitigate.

Discussion

Applicant contends that the Judge did not "give proper weight" to evidence of his prior service in support of the U.S. Appeal Brief at 5. We acknowledge that the record contains evidence that Applicant has assumed significant risk to himself in the performance of his duties. For example, a 2010 memo by a military officer asserts that Applicant "has risked his life in support of our operations . . . As an Iraqi national openly serving with U.S. forces, it is inevitable that he is threatened as he assists the United States." Applicant Exhibit (AE) D. Another memo states that "during [Applicant's] service with [military unit] he conducted numerous combat patrols, risked his life, and made enormous sacrifices in support of U.S. objectives." AE E. We have long held that evidence of "significant contributions to U.S. national security in dangerous, high-risk circumstances is entitled to greater probative weight than evidence of mere compliance with security rules and regulations." ISCR Case No. 13-00142 at 4 (App. Bd. Oct. 15, 2014). Applicant deserves the accolades that he has received for his bravery. However, each case must be decided on its own merits. Directive, Encl. 2, App. A ¶ 2(b). Even such evidence as described above cannot, in and of itself, be dispositive. Rather, it must be evaluated in light of the entire record, with particular attention to evidence of circumstances that pose foreseeable risks to the applicant of pressure or coercion. In the case before us, the extent of Applicant's family members and other connections in Iraq, his frequent communication with them, and evidence that some of his contacts are employed by the Iraqi government in one capacity or another, suggest the extent to which he could come to the attention of persons interested in acquiring U.S. classified information. In addition to this, we note a State Department report regarding Iraq, included in the official notice documents submitted by the Government, state that terrorism is a critical threat in Baghdad and terrorist groups remain capable of operating throughout the country. Iraq 2020 Crime and Safety Report: Baghdad, at 2. *See, e.g.*, ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015) to the effect that the presence of terrorist activity in a foreign country is an important consideration that must be brought to bear upon a clearance decision.

Applicant's argument includes reference to other factors that he believes the Judge failed properly to weigh, such as his U.S. savings account and what he terms merely casual contact with his Iraqi relatives and friends. Given the totality of the record evidence, however, we conclude that Applicant is expressing a disagreement with the Judge's weighing of the evidence, which is not enough 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. 18-02581 at 4 (App. Bd. Jan. 14, 2020). Moreover, Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 18-02872 at 3 (App. Bd. Jan. 15, 2020). We give due consideration to the Hearing Office cases that Applicant has cited. However, as noted above, each case must be decided upon its own merits. Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 18-02074 at 2 (App. Bd. Aug. 27, 2019). The cases to which Applicant draws our attention are not sufficient to undermine the Judge's ultimate conclusions.

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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

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

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

Signed Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board