

Date: June 22, 2023

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Applicant for Security Clearance)
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ISCR Case No. 22-00364

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 5, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guideline B (Foreign Influence) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On April 25, 2023, Defense Office of Hearings and Appeals Administrative Judge Ross D. Hyams denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant’s mother and six siblings are resident citizens of Iraq and that four of his siblings are employed either directly by the Iraqi government or by entities owned and operated by the same. The SOR further alleged that Applicant and his siblings have a financial interest in real property located in Iraq. The Judge found in favor of Applicant with respect to the financial interest allegation, but against him on the remaining Guideline B concerns.

On appeal, Applicant asserts that the Judge failed to properly consider all available evidence, rendering his adverse decision arbitrary, capricious, or contrary to law, and failed to properly apply the mitigating conditions and whole-person analysis. For the reasons set forth below, we affirm.

Judge's Findings of Fact and Analysis

Applicant, in his early 40s, was born, raised, and educated in Iraq. He earned his bachelor's degree in 2005, and in 2008 started working for a company that serviced coalition military bases in Iraq. Due to his work on coalition bases, Applicant was threatened twice in 2010 and had to take safety precautions. He was granted a special immigrant visa (SIV) by the United States in 2012. From his entry into the U.S. until 2018, Applicant worked for construction companies that sent him on various overseas assignments, including in Iraq, for periods usually less than six months. He worked in the U.S. from 2018 to 2021 and became a U.S. citizen in 2019. Since 2021, Applicant has been employed by a government contractor and lives and works overseas.

Applicant does not own a home in the U.S. He claimed to rent a room from a friend when visiting the U.S. but had no lease and did not know his friend's last name. He maintains few close contacts and modest financial assets in the U.S.

Applicant's mother and his siblings and their families are Iraqi resident citizens. Four of his siblings have jobs connected with the Iraqi Government. In his February 2020 security clearance application (SCA), Applicant disclosed regular and frequent contact with almost all of his immediate family members; however, he testified at hearing to having reduced his contact with them after applying for a security clearance because he thought it would assist his obtaining one.

The Judge took administrative notice of facts regarding Iraq including, among others, that the U.S. Department of State has assessed Iraq as being a high threat, "Level 4: Do not travel" location due to terrorism, kidnapping, armed conflict, civil unrest, and limited ability to assist U.S. citizens in country; anti-U.S. sectarian militias threaten U.S. citizens and Western companies throughout Iraq; and Islamic State in Iraq and Syria (ISIS), militia groups, and criminal gangs target U.S. citizens for attacks and hostage-taking. A heightened security risk in Iraq was established by these facts.

The Judge found that Applicant's deep and longstanding connection to Iraq, including through close and continuing contact with his family, presents a conflict of interest and establishes disqualifying conditions AG ¶ 7(a) and AG ¶ 7(b). In concluding that none of the mitigating conditions fully applied, the Judge noted that Applicant has spent a significant portion of his life in Iraq, including after immigrating to the United States, and his ties to the U.S. are comparatively limited. Applicant also initially reported frequent contact with most of his family members, and his "temporary limitation of communications with [them] during the processing of his security clearance" failed to alleviate concerns about the associated risk for foreign influence or exploitation. Decision at 7-8.

Discussion

Applicant's arguments on appeal can be parsed into three assignments of error, including that the Judge failed to consider that: 1) Applicant's family themselves do not create a vulnerability of foreign pressure or coercion; 2) Applicant has limited contact with his family and therefore has no potential conflict of interest; and 3) Applicant was previously threatened while working on

behalf of the U.S.¹ As discussed more thoroughly below, Applicant's arguments amount to a disagreement with the Judge's weighing of the evidence, which is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Position of Family in Iraq

Applicant argues that the Judge failed to consider favorable evidence, including that his Iraqi relatives do not ask him about his job and that those employed by entities associated with the Iraqi Government work in professions, such as schoolteacher, accountant, and boat captain, that make it unlikely that they will attempt to gain information related to Applicant's work. Appeal Brief at 9. Similarly, Applicant asserts that the Judge's analysis regarding mitigating condition AG ¶ 8(a) is defective because it "does not indicate whether [Applicant's] family members would be interested in classified information, [or] whether they have sought classified information (or any information about [Applicant's] job)." Appeal Brief at 11.

It is well-established that the Government is not required to prove an actual threat of espionage. *See, e.g.*, ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009). Rather, there is a rational connection between an applicant's family ties in a hostile country, even if that family has no connection with the foreign government, and the risk that the applicant might fail to safeguard classified information. *See, e.g.*, ISCR Case No. 01-26893 at 7 (App. Bd. Oct. 16, 2002) ("[H]uman experience shows that people have engaged in espionage or committed deliberate security violations for a broad range of reasons, including succumbing to threats made by a foreign entity against a third party for whom the target has ties of love or affection."). Here, the Judge reasonably found that Applicant has longstanding personal and family connections to Iraq, which given current geopolitical circumstances presents a heightened risk,² and concluded that Applicant failed to show it is unlikely he will be placed in a position of having to choose between those connections and the interests of the U.S.

Communication with Family in Iraq

Turning to his communication with his family in Iraq, Applicant takes issue with the Judge's conclusion that his more limited contact is only "temporary." Appeal Brief at 10, 13. We agree that the record does not explicitly reflect that Applicant's reduced contact will change in the future;³ however, we do not find Applicant's challenge persuasive. The concern in Foreign Influence cases arises from the *nature* of an applicant's foreign ties, which is not evinced by the current state of communications in a vacuum. While frequency of contact is a factor to be

¹ Applicant claims to challenge several of the Judge's factual findings as "wholly unsupported by the record." Appeal Brief at 8. These purported factual errors are merely disagreements with the Judge's weighing of the evidence and are therefore examined with his other arguments.

² In Foreign Influence cases, the nature of the foreign government involved, including its intelligence gathering history and human rights record, as well as the presence of terrorist activity in the country, provide context for the other record evidence and are among the important considerations for the Judge, including as part of the whole-person analysis. *See* ISCR Case No. 05-03250 at 5 (App. Bd. Apr. 6, 2007).

³ When asked if he intends to resume his prior level of contact with family if he is granted a security clearance, Applicant testified, without elaborating, that "it depends." Tr. at 37.

considered in evaluating the concern, it alone is not dispositive. This leads to Applicant's next argument – that the Judge improperly relied on evidence about his contact with family members as drawn from his SCA instead of his hearing testimony. Appeal Brief at 8-9, 10, 12, 15. He appears to argue that his current reduced contact should be given greater weight than the more significant contact disclosed in his three-year-old SCA. We disagree.

An applicant's actions prior to the initiation of the security clearance process are illuminating of his or her unmotivated conduct and should be given weighty consideration. Indeed, the Appeal Board has routinely held that the timing of an applicant's action in resolving security concerns is relevant in evaluating its mitigative value. *See, e.g.*, ISCR Case No. 19-01911 at 6 (App. Bd. Nov. 4, 2020). At the start of his clearance process, Applicant reported having contact with his mother and five of his siblings on at least a monthly, but more typically a weekly basis. *See* Government Exhibit 1 at 31-41. This regular and frequent level of communication is indicative of the depth of Applicant's affection for his family in Iraq. His reduction in communication was not due to any weakening of those bonds, but rather to improve his chances of obtaining a clearance. Tr. at 37. Further still, he maintains regular contact with one sister who facilitates his continued communication with his mother. Tr. at 23, 43. The evidence supports that Applicant's bonds of affection for his family in Iraq are ongoing, even where his communications are not. The Judge's conclusion that Applicant's family in Iraq create an unmitigated potential conflict of interest is consistent with the record evidence.

Prior Threats

Applicant next contends that the Judge failed to consider that he previously received credible threats related to his support of the U.S. and, despite having not yet received SIV status or being naturalized, he reported the threats and continued to work on behalf of the U.S. government. Appeal Brief at 9, 12. This argument is without merit, as the Board has held that an applicant who has already been threatened by a foreign entity may encounter similar threats in the future and be pressured to compromise national security information. *See, e.g.*, ISCR Case No 17-01981 at 5 (App. Bd. Dec. 17, 2019).

Finally, Applicant argues that, considering his prior reporting of threats made against him, the Judge erred in failing to analyze mitigating condition AG ¶ 8(e). Appeal Brief at 14. A Judge need not discuss all the potentially applicable analytical factors set forth in the Directive, including the mitigating conditions and whole-person factors. *See* ISCR Case No. 12-05512 at 3 (App. Bd. Jan. 12, 2017) (citation omitted). Considering the entire record, the Judge's omission of discussion of AG ¶ 8(e) does not render his analysis deficient or his decision arbitrary or capricious.

Applicant has not rebutted the presumption that the Judge considered all the record evidence, nor has he established that the Judge's conclusions were arbitrary or capricious. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, and the record evidence is sufficient to support that the Judge's findings and conclusions are sustainable. "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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

Order

The decision is **AFFIRMED**.

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

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board