**DEPARTMENT OF DEFENSE**
**DEFENSE LEGAL SERVICES AGENCY**
**DEFENSE OFFICE OF HEARINGS AND APPEALS**
**APPEAL BOARD**
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Date: April 15, 2024

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| In the matter of: | ) | |
| | ) | |
| ----- | ) | ISCR Case No. 23-00653 |
| | ) | |
| Applicant for Security Clearance | ) | |

# APPEAL BOARD DECISION

## APPEARANCES

**FOR GOVERNMENT**
Julie Mendez Esq., Chief Department Counsel

**FOR APPLICANT**
Christopher Snowden, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On April 12, 2023, 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) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 6, 2024, Defense Office of Hearings and Appeals Administrative Judge Eric H. Borgstrom 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 parents and sister are citizens and residents of Iraq. It also alleged that his two brothers are citizens of Iraq, one of whom resides in Finland and the other in the United Arab Emirates. The Judge found in favor of Applicant with respect to the concerns raised by his brother residing in Finland, but against him on the remaining Guideline B concerns.

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

**Judge's Findings of Fact and Analysis**

Applicant is in his early 40s and was born in Iraq where he was raised and earned a bachelor's degree in engineering. He subsequently worked for the Iraqi Ministry of Water Resources and for private companies in the United Arab Emirates and Qatar. During that time, he married but divorced in 2021 after 10 years of marriage. He has two pre-teen children from that marriage. His ex-wife is now a U.S. citizen but lives in Qatar with her children and new husband. Applicant moved to the United States in 2014 and was employed by various companies as an engineer. He became a naturalized U.S. citizen in 2018 and then moved back to Qatar that same year. While in Qatar he was employed by a private company. He returned to the United States in 2021, but later in the year he returned to Iraq to care for his parents. In July 2023, he moved back to the United States and obtained employment as an engineer.

The Judge took administrative notice of facts regarding Iraq including, among others, that the U.S. Department of State has issued a Level 4 travel advisory due to terrorism, kidnapping, armed conflict, and civil unrest, and that terrorist organizations remain active in the country and pose a threat to U.S. forces and citizens.

The Judge found that Applicant's relationships within the United States were insufficient to mitigate the close relationships with his parents and siblings who are citizens of a country where conditions create a heightened risk of exploitation.

**Discussion**

Applicant's arguments on appeal can be parsed into three assignments of error, including that the Judge failed to consider that Applicant's family themselves do not create a vulnerability of foreign pressure or coercion, that Applicant has limited contact with his family and therefore has no potential conflict of interest, and that the Administrative Judge applied an analysis that amounts to "a *de facto* ban on U.S. citizens with family in Iraq from having a clearance." Appeal Brief (AB) at 3, fn 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).

Applicant takes issue with the Judge's conclusion that the amount of contact he has with his family members was not mitigating. However, he maintains weekly contact with his retired parents who reside in Baghdad, Iraq, and maintains monthly contact with his sister who lives in northern Iraq. He is in contact with his brother in the United Arab Emirates two or three times a year. There is a rebuttable presumption that an applicant's relationship with immediate family

members is not casual. *See, e.g.,* ISCR Case No. 07-13696 at 4 (App. Bd. Feb. 9, 2009). There is nothing in the record of this case that rebuts that presumption. For example, there is no evidence that Applicant is estranged in any way from his foreign relatives with whom he describes his relationship as "normal." Tr. at 43; Decision at 3. The totality of Applicant's contacts with his relatives cannot be said to be casual. *See, e.g.,* ISCR Case No. 07-13696 at 4. The Judge's conclusion with regard to AG ¶ 8(c) is supported by the evidence.

The concern in foreign influence cases arises from the *nature* of an applicant's foreign ties, which is not viewed in a vacuum. While frequency of contact is a factor to be considered in evaluating the concern, it alone is not dispositive. ISCR Case No. 22-00364 at 3 (App. Bd. Jun. 22, 2023). It is of little consequence that relatives or friends may not have specific ties to the foreign government or be visible to that government. It is a well-established principle that "the relative obscurity of foreign family members does not provide a meaningful measure of whether Applicant's circumstances pose a security risk." ISCR Case No. 17-03450 at 4 (App. Bd. Feb. 29, 2019). "Rather, it is the nature of the ties themselves that raise a concern." ISCR Case No. 15-04389 at 3 (App. Bd. Feb. 27, 2018). This requires an assessment of the closeness of the ties and an accurate and current assessment of the geopolitical situation and intelligence/security profile of the country vis-à-vis the United States. ISCR Case No. No.17-03026 at fn. 4 (App. Bd. Jan. 16, 2019).

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 and the risk that the applicant might fail to safeguard classified information, even if that family has no connection with the foreign government. *See, e.g.,* ISCR Case No. 01-26893 at 5 (App. Bd. Oct. 16, 2002) ("Moreover, human 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 family connections to Iraq, which given current geopolitical circumstances presents a heightened risk, 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 United States.

Applicant also asserts that the Judge's findings of fact are unsupported because they rely "entirely on the State Department travel advisory." AB at 6-8. However this assertion is incorrect. Rather than a one-dimensional analysis as claimed by Applicant, the Judge also specifically addressed other administratively-noticed facts and weighed them in the context of Applicant's family members and his ties to them, as well as considering Applicant's personal ties within the United States and other countries. Decision at 6-7. The Judge's conclusion with regard to AG ¶ 8(a) is supported by the evidence.

Finally, Applicant asserts that the Judge's analysis created a "de facto" bar to granting security clearances to applicants with Iraqi family members. The Guidelines cannot be applied with a *per se* rule that merely having close relatives in a particular foreign country must result in

an adverse security clearance decision without regard to any mitigating evidence or consideration of the whole person. *See, e.g.,* ISCR Case No. 99-0511 at 6 (App. Bd. Dec. 19, 2000) (rejecting an argument that would have the practical effect of establishing such a rule.) However, that was not how the Judge approached this case. Instead, as required, he assessed all aspects of the facts and circumstances of Applicant's ties and contacts with his Iraqi family members. *See* ISCR Case No. 02-22461 at 5 (App. Bd. Oct. 27, 2005). Thus, the Judge's analysis was consistent with Directive ¶ 8(b) which requires judges to balance an applicant's ties within the U.S. to his or her ties to a foreign person, organization, or country when analyzing the extent to which applicants might find themselves in a conflict of interest. *See* ISCR Case No. 08-11788 at 5 (App. Bd. Jul. 28, 2010). This analysis also must consider record evidence that detracts from the notion that an applicant's ties to the United States are paramount. ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 9, 2007). The Judge correctly did so in this instance. There is no merit to Applicant's suggestion that the Judge applied such a *per se* rule when analyzing his case. *See* ISCR Case No. 02-09907 at 7 (App. Bd. Mar. 17, 2004).

We have considered the entirety of the arguments contained in Applicant's appeal brief. 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.'" *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: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Chair, Appeal Board

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

Signed: James B. Norman
James B. Norman
Administrative Judge
Member, Appeal Board