



**DEPARTMENT OF DEFENSE  
DEFENSE LEGAL SERVICES AGENCY  
DEFENSE OFFICE OF HEARINGS AND APPEALS  
APPEAL BOARD  
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Date: July 11, 2024

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In the matter of:	)	
	)	
	)	
-----	)	ISCR Case No. 23-01225
	)	
Applicant for Security Clearance	)	
_____	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Mendez, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 8, 2023, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline B (Foreign Influence) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive (SEAD) 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision based on the written record, without a hearing. The Government submitted a File of Relevant Material (FORM) containing the entire record and the Government’s argument. Applicant filed a reply. On May 7, 2024, Defense Office of Hearings and Appeals Judge Bryan J. Olmos issued a decision denying Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that two of Applicant’s brother are citizens and residents of Iraq and that another resides in Saudi Arabia and is a dual citizen of the United Kingdom and Iraq. It also alleged that Applicant has a property interest in Iraq and that his father-in-law is a dual citizen of Iraq and the United States. In his Answer to the SOR, Applicant admitted all of the allegations with

explanations. The Judge found in Applicant's favor regarding his father-in-law and against Applicant as to the other allegations.

On appeal, Applicant asserts that he was adversely impacted by his election to have the case decided based upon the administrative record and that the Judge failed to correctly consider the evidence. Consistent with the following, we affirm.

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

The Judge made the following findings of fact relevant to this appeal: Applicant is 49 years old and was born in Iraq where he was raised and educated. From about October 2003 through February 2006, after completing mandatory Iraqi military service, he was employed as an engineer with construction companies working on infrastructure projects in Iraq for U.S. Government agencies. This work was inherently dangerous, and Applicant received at least two credible threats. Decision at 3; Applicant Exhibit (AE) E. After learning that insurgents knew the names of everyone on his project, Applicant left his job and subsequently moved to the United Arab Emirates (UAE), where he worked as a civil engineer for an international construction company. In 2010, Applicant submitted a Special Immigrant Visa (SIV) application to immigrate to the United States. The application was approved, and he entered the United States in June 2012. Shortly thereafter, he returned overseas where he worked in the UAE and visited Iraq through January 2014. In 2014, he married a dual citizen of Iraq and the United States. They reside in the United States and have two children who are U.S. citizens. In January 2020, Applicant became a naturalized U.S. citizen.

Applicant has five brothers who live outside of the United States. Two are citizens and residents of Iraq with whom Applicant communicates on a regular basis. A third brother is a dual citizen of the United Kingdom and Iraq, working in Saudi Arabia. A fourth brother is a dual citizen of Iraq and Austria who lives in Austria. Applicant's fifth brother is a citizen of Iraq and lives in the UAE. Applicant's father-in-law immigrated to the United States in 2009 and was naturalized as a United States citizen in 2015. He is a dual citizen of the U.S. and Iraq but has not returned to Iraq since he entered the United States.

Following the deaths of their mother and father, Applicant and his brothers inherited their family home in Iraq. Applicant stated that he maintains his Iraqi citizenship in order to protect his financial interest in this property. He claimed that "an inside settlement will be done soon," in which his brothers will acquire his share. Decision at 4. Applicant and his family intend to remain in the United States, and he is willing to renounce his Iraqi citizenship. He asserted that he cannot be manipulated by a foreign person or organization as a result of his relationships with his Iraqi family members or his partial ownership of property in Iraq.

The Judge concluded that the concerns raised by Applicant's father-in-law were mitigated but that no mitigating conditions were applicable to the other allegations.

## Discussion

In his Appeal, Applicant argues that he “made a big mistake by requesting an administrative [decision] in lieu of a hearing.” Brief at 1, 2, 7. He also questions why he was denied eligibility for access to classified information while others whom he believes are similarly situated were granted eligibility. Additionally, he asserts that the Judge did not consider his SIV status. These assertions of error lack merit.

Enclosure 3 of the Directive explains the differences between a hearing and a decision based on the written record. Directive ¶¶ E3.1.17, E3.1.18. Applicant was provided a copy of the Directive when he received the SOR. With this information available to him, he chose to have his case decided on the written record. Nothing in either the record or Applicant’s appeal brief indicates that he lacked the mental competence or basic ability to make that decision. The totality of the circumstances reflect that Applicant made informed decisions throughout these proceedings. Merely because he now has decided that he might have presented a better case if he had proceeded differently, it does not follow that he was denied the opportunity to prepare and present his case. ISCR Case No. 00-0086 at 2 (App. Bd. Dec. 13, 2000).

After examining the record as a whole, we conclude that Applicant received adequate notice of his forum options and his right to submit evidence. *See, e.g.*, ISCR Case No. 20-01217 at 3 (App. Bd. Jul. 19, 2021). There is no assertion of a procedural irregularity, nor any indication that Applicant’s choice was not freely made. Applicant was not denied the due process rights afforded by the Directive. *See* ISCR Case No. 10-06437 at 2-3 (App. Bd. Mar. 11, 2013).

Applicant's brief also presents arguments based on the anecdotal experiences of other clearance applicants; however, this analogy is misplaced. Every clearance applicant’s adjudication rests upon particular factual circumstances that do not establish any precedent in other cases. An applicant's suitability for a security clearance is not increased or decreased based on how the cases of other applicants were processed or handled. ISCR Case No. 09-04216 at 3 (App. Bd. Jan. 31, 2011); ISCR Case No. 11-02842 at 3 (App. Bd. Jun. 7, 2012). The fact another applicant may have been granted eligibility for access to classified information under what Applicant believes are similar circumstances has no bearing on his case because each case is decided upon its unique facts and own merits. Directive, Encl. 2, App. A ¶ 2(b); ISCR Case No. 19-00657 at 3 (App. Bd. Jul. 21, 2021).

Applicant also argues that the Judge did not consider the fact that he immigrated from Iraq through the SIV program. However, the Judge specifically addressed this in his findings of fact, his discussion of the mitigating conditions, and in his whole-person analysis. Although Applicant’s contributions to U.S. operations in Iraq are important to be considered, such conduct is not, in and of itself, 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. ISCR Case No. 21-00068 at 3 (App. Bd. Jul. 6, 2022); ISCR Case No. 13-00142 at 4 (App. Bd. Oct. 15, 2014). The circumstances surrounding Applicant’s Special Immigrant Visa are relevant to a clearance adjudication and were considered by the Administrative Judge, however the grant of a SIV does not, *de-facto*, equate to eligibility for access to classified information. *See* ISCR Case No. 16-02061 at 2 (App. Bd. Sept. 19, 2018); ISCR Case No. 16-01900 at 2 (App. Bd.

Apr. 19, 2018); ISCR Case No. 16-00024 at 2 (App. Bd. Nov. 9, 2017). Indeed, the circumstances giving rise to the SIV may, themselves, reflect security concerns. *E.g.* ISCR Case No. 16-01900 at 2, 3.

The remainder of Applicant’s brief consists of 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. 19-03344 at 3 (App. Bd. Dec. 21, 2020). There is a rebuttable presumption that the Judge considered all the record evidence unless the Judge specifically states otherwise, and Applicant’s bare assertion that the Judge did not consider evidence is not sufficient to rebut that presumption. *Id.*

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 in ISCR Case No. 23-01225 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