



**DEPARTMENT OF WAR
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD**



Date: April 16, 2026

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In the matter of:)
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Applicant for Security Clearance)
_____)

ISCR Case No. 24-02063

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Carl Marrone, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 27, 2025, 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 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On January 29, 2026, Defense Office of Hearings and Appeals Administrative Judge Richard A. Cefola granted Applicant national security eligibility. The Government appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant’s sister is a dual citizen of the United States and Israel residing in Israel and that her fiancé (now husband) is a dual citizen of Israel and Australia, residing in Israel; and that both Applicant’s sister and her husband served on active duty in the Israel Defense Forces (IDF). Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. The SOR also listed an additional foreign contact, but that allegation (SOR ¶ 1.c) was withdrawn by the Government at hearing.

Background

Applicant, in his mid-30's, has worked as an employee of a defense contractor since 2022. He earned a bachelor's degree and a master's degree, both from the same U.S. university. He is a published author and is a member of two American honor societies. He is married to a U.S. citizen.

Two of Applicant's grandparents fled to the United States during the Holocaust. His paternal grandfather served in the U.S. Army, and his maternal grandfather was a Seabee in the Pacific. His parents were both born in the United States, as were he and his two siblings. He has one brother and one sister. His brother resides in the United States, but his sister resides in Israel.

Applicant has been to Israel a total of four times in his life: for his own bar mitzvah, for his sister's bat mitzvah, with his then fiancée (now wife), and to attend his sister's wedding. He reported seeing his sister about once a year when she visited the United States. Applicant, his wife, his sister, and his brother-in-law have a WhatsApp group chat that they use to communicate.

Three individuals testified on behalf of Applicant: one is a friend and coworker, the other two are close friends. They all spoke highly of Applicant and his passion and commitment to the United States. He also submitted several letters of recommendation that attested to his good character. One, from a U.S. Congressman for whom Applicant interned during 2010, noted Applicant's dedication and enthusiasm. A letter from Applicant's wife noted that Applicant had "a deep respect for the institutions that keep our country running" and that he volunteered as a poll worker in every major election. Applicant Exhibit H at 1.

The SOR alleged that Applicant's sister was a dual national of Israel and of the United States. She acquired Israeli citizenship through Aliyah, which permits immigration of Jews from the diaspora to Israel. She was born in America but moved to Israel after graduating from college to join the IDF in mid-2016. She self-identifies as a Zionist. Applicant's sister explained that she identified strongly with the Jewish religion and culture but not with the Israeli government. She served in the IDF from late 2016 until early 2019 and obtained the rank of Sergeant. Most of her service was in a combat division, but she transferred into an intelligence division about six months before the end of her service. Applicant's sister reported that she is now considered a reservist and was recalled to service three times in her reserve capacity. The first two times were for training. Her final recall was in 2021, and her focus at that time was to identify tunnels in Gaza. Applicant's sister indicated that the likelihood of being recalled to duty again was minimal, as she was not activated in response to the October 7, 2023 attack and would need to be retrained. She testified that she maintained a security clearance with the IDF, granted as part of her IDF service, which she technically still possessed as those clearances do not expire. She reported she now works in the research and analytics department for a small startup company. Her company had no interaction with the Israeli government. When asked where her allegiance would lie if there were to be a conflict between the United States and Israel, she answered with "the United States." Tr. 2 at 20.

Applicant's sister married a dual national of Israel and Australia. He served in the IDF for 18 months to fulfill compulsory service. He achieved the rank of Corporal and worked in logistics. He was discharged as the result of an injury that prevents him from serving again and relieves him of his reserve obligation. He indicated that neither his friends nor family in Israel have any

connections to the Government of Israel. Applicant's brother-in-law works for a pharmaceutical company in Israel. Applicant had only shared that he was a software engineer with his brother-in-law.

The Judge noted that he took "administrative notice of the fact that since 2023, the Israeli government has taken credible steps to identify and punish officials who have committed human rights abuses." Decision at 3.

Scope of Review

On appeal, the Board does not review a case *de novo*, but rather addresses material issues raised by the parties to determine whether there is factual or legal error. When a judge's factual findings are challenged, the Board must determine whether the "findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

When a judge's ruling or conclusions are challenged, we must determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. A judge's decision can be arbitrary or capricious if: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 95-0600, 1996 WL 480993 at *3 (App. Bd. May. 16, 1996) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In deciding whether a judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. *See* ISCR Case No. 03-22861 at 2 (App. Bd. Jun. 2, 2006).

When an appeal issue raises a question of law, the Board's scope of review is plenary. *See* DISCR OSD Case No. 87-2107, 1992 WL 388439 at *3-4 (App. Bd. Sep. 29, 1992) (citations to federal cases omitted). If an appealing party demonstrates factual or legal error, then the Board must consider the following questions: (1) Is the error harmful or harmless?; (2) Has the nonappealing party made a persuasive argument for how the judge's decision can be affirmed on alternate grounds?; and (3) If the judge's decision cannot be affirmed, should the case be reversed or remanded? *See* ISCR Case No. 02-08032 at 2 (App. Bd. May 14, 2004).

Discussion

On appeal, the Government argues that the Judge's application of the Guideline B mitigating conditions and analysis under the Whole-Person Concept were arbitrary, capricious, and not supported by the record evidence.

The entirety of the Judge's mitigation analysis is as follows:

Applicant's contacts with his sister and her husband are casual, dealing with family matters, and do not focus on Applicant's work. Soon, their relationship will not be foreign, as his sister is in the process of returning to the U.S. with her spouse. Her return is a matter of right as a U.S. citizen, and husband's return as a Green Card holder. Foreign Influence is found for Applicant.

Decision at 6. Similarly, the Judge's analysis under the Whole-Person Concept concludes:

Applicant has a distinguished history of working in the defense industry and is respected by colleagues. He performs well at his job.

Id. at 7.

Judges have broad latitude and discretion in how to write their decisions, provided they issue a written decision that allows the parties and the Board to discern what the judge is finding and concluding, and how the judge is analyzing the case. *See* ISCR Case No. 98-0809 at 1-2 (App. Bd. Aug. 19, 1999). A judge must consider pertinent factors and the Adjudicative Guidelines and must articulate a rational explanation for any deviations from them. *Id.* The Judge did not do so here. Further, under the Whole-Person Concept, a judge must assess the totality of an applicant's conduct and circumstances in order to evaluate the applicant's security eligibility, not just consider an applicant's conduct and circumstances in a piecemeal manner. *See* ISCR Case No. 99-0601 at 8 (App. Bd. Jan. 30, 2001). Here, the Judge erred in his failure to explain his application of the mitigating conditions and in his incomplete Whole-Person analysis. As a result, his decision is unsustainable as drafted for the reasons articulated below.

First, the Judge placed significant weight on assumptions about the future. Of the Judge's four-sentence analysis, he devoted two sentences to Applicant's sister and brother-in-law's unrealized expectations to return to the United States. Applicant's sister testified:

My husband and I are looking to move back to the U.S. in the next coming years. We're in the process right now. He's an Israeli Citizen, and we're in the process right now to apply for a Green Card. So, it normally takes a few years to kind of get everything set up and settled, but that is our plan.

Tr. 2 at 18. She testified further that they were "starting to gather [their] documentation" to apply but had filed nothing. *Id.* at 38. In his brief mitigation analysis, the Judge relied on the sister's testimony to find that "[s]oon, their relationship will not be foreign, as his sister is in the process of returning to the U.S. with her spouse." Decision at 6. The Judge's analysis is problematic, both because his characterization of the relocation as occurring "soon" runs contrary to the record¹ and because the couple's potential future relocation is not relevant for purposes of mitigation. *See* ISCR Case No. 24-00750 at 7 (App. Bd. May 12, 2025). The Judge's decision to base much of his mitigating rationale on future intent was an error.

¹ As of the hearing, any relocation was purely speculative and Applicant's sister described the timeline as, at best, a few years away.

Similarly, as the Government argues, in applying the mitigating conditions, the Judge failed to consider the nature of the heightened risk including the foreign government involved, its intelligence gathering history, and the history of terrorism in the region. The Board has previously held that an accurate and current assessment of the geopolitical situation in the country is crucial to the analysis of AG ¶¶ 8(a) and 8(b). *See* ISCR Case No. 07-14508 at 4 (App. Bd. Oct. 22, 2008). While the Judge cited one sentence from the lengthy Administrative Notice submissions in his discussion of the facts, the decision is otherwise silent to the security significance of Applicant’s sister and brother-in-law’s residence, dual citizenship, and service to Israel, or how the heightened risk is addressed by the mitigating conditions. The Judge highlights that “since 2023, the Israeli government has taken credible steps to identify and punish officials who have committed human rights abuses,” but he does not explain why those facts alone — in light of the entire record — mean that it is unlikely that Applicant will be placed in a position of having to choose between his relationships with sister or brother-in-law and the interests of the United States or that Applicant would resolve any conflict of interest in favor of the United States.

Further, under AG ¶ 8(b), the Judge failed to explain why he found there was no conflict of interest. The Judge did not explain whether he found Applicant’s sense of loyalty or obligation to his sister and brother-in-law are “minimal” or whether he found Applicant had “deep and longstanding relationships and loyalties in the United States,” to demonstrate why he believed that Applicant would resolve any conflict of interest in favor of the U.S. interest, nor did he establish what facts he relied upon to make that finding.²

As a result of the above identified errors, the Board concludes that the case should be remanded to the Judge. The Judge should:

- 1) Explicitly set out the nature of the foreign government involved, including its intelligence gathering history and risks related to terrorism in the region.
- 2) Explicitly state which of the mitigating conditions apply.
- 3) Explain how each part of the mitigating condition said to apply is met.
- 4) Explain how the heightened risk required for application of the disqualifying conditions is addressed by the mitigating conditions.

When a mitigating condition is multi-pronged, the Judge’s analysis should address each of the factors in determining if the condition applies. For example, if the Judge applies AG ¶ 8(b), he must address why he finds each part of the mitigating condition is satisfied. That is, he should explain and support why he finds that:

- there is no conflict of interest because either:
 - Applicant’s sense of loyalty or obligation to his sister and brother-in-law, or allegiance to Israel is so minimal; *or*

² Applicant requests that the Appeal Board take judicial notice of the facts of the current relations between the United States and Israel. As we are remanding this matter and because “decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue,” the Judge should reopen the record on remand for receipt of additional administrative notice documentation. *See* ISCR Case No. 05-11292, 2007 WL 1560035 at *3 (App. Bd. Apr. 12, 2007).

- Applicant has such deep and longstanding relationships and loyalties in the United States
- that Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest.

Any other mitigating condition the Judge applies should be addressed in a similar fashion.

With respect to AG ¶ 8(c), the Judge should recall that “[t]here is a rebuttable presumption that an applicant’s contacts with immediate family members are not casual.” *See* ISCR Case No. 00-0484 at 5 (App. Bd. Feb 1, 2002). Moreover, “casual contact” is not demonstrated merely because it does not focus on Applicant’s work; rather, the record reflects that Applicant and his wife, sister, and brother-in-law share a “fairly active” group chat and recently all began using the same health tracker and are “very invested in each other’s stats.” Tr. at 29-30. In assessing the Applicant’s contacts with his sister and brother-in-law, the Judge must consider the totality of those contacts and not engage in a piecemeal evaluation of such contacts. Further, AG ¶ 8(c) applies only when contacts with foreign citizens are both casual *and* infrequent.

Conclusion

We conclude that the best resolution of this case is to remand it to the Judge to address the errors identified herein and thereafter determine if Applicant has or has not sufficiently mitigated the Government’s remaining concerns under Guideline B. *See* ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2024) (remand is appropriate when the errors can be corrected and there is a significant chance of reaching a different result upon correction.). Upon remand, the Judge is required to issue a new decision. Directive ¶ E3.1.35. The Board retains no jurisdiction over a remanded decision; however, the Judge’s decision issued after remand may be appealed. Directive ¶¶ E3.1.28 and E3.1.30.

Order

The decision in ISCR Case No. 24-02063 is **REMANDED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Jennifer Goldstein

Jennifer Goldstein
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board