

KEYWORD: Guideline B

DIGEST: As Applicant notes, the Government’s responsibility to produce substantial evidence of security concern arises with regard to allegations that have been controverted. In the case before us, Applicant admitted the allegation that his “mother, [siblings]... and mother-in-law are citizens of Iraq.” Therefore, the Government bore no duty to produce evidence regarding the foreign citizenship and residency of these relatives, although, in fact, items in the Government’s File of Relevant Material constitute such evidence. Adverse decision affirmed.

CASENO: 17-00257.a1

DATE: 12/7/2017

DATE: December 7, 2017

In Re:)	
)	
-----)	ISCR Case No. 17-00257
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 16, 2017, 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 decision on the written record. On October 5, 2017, after considering the record, 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 issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Born and educated in Iraq, Applicant married in that country in the mid-1990s. He and his wife came to the U.S. as refugees a year later, and Applicant became a citizen of this country in the mid-2000s. He began working for a Defense contractor a few years ago. His mother and siblings are citizens and residents of Iraq. He speaks to them on the phone every week. The record contains no information about Applicant's siblings' marital situation.

Since becoming a U.S. citizen, Applicant has traveled to Iraq on four occasions, the last time being about three years ago. He spent three months in Iraq during that last trip, and it did not appear on his security clearance application (SCA). Applicant did not know why it was left off of the SCA. He reported that he filled out a hard copy and was sure that he had included the trip on the form. He did not explain why the trip lasted as long as it did.

There is no record evidence of Applicant's financial interests in the U.S. aside from a house that he owns. Neither is there significant evidence or detail about the ties that he may have established in this country.

Iraq is plagued by violence caused by terrorist organizations such as Al Qaeda. These forces have targeted U.S. personnel and Iraqi civilians. The U.S. State Department has warned citizens of this country about the dangers of traveling in Iraq. The country is plagued by human rights abuses and by systemic governmental corruption.

The Judge's Analysis

The Judge cited to evidence of Applicant's weekly phone contact with his Iraqi relatives and of his monthly contact with his wife's mother. He concluded that these familial ties, when viewed in light of the geopolitical situation in Iraq, established a heightened risk of foreign influence. He stated that, despite a lack of evidence that Applicant's relatives work for the Iraqi government, the record viewed as a whole shows that there is a risk that Applicant could be placed in a position of having to choose between the interests of the U.S. and of his foreign relatives. In the whole-person analysis, the Judge noted that, despite bearing the burden of persuasion as to mitigation, he did not provide a response to the File of Relevant Material. He concluded that the evidence is not sufficient to meet Applicant's burden of persuasion.

Discussion

Applicant contends that "the Government did not prove, by substantial evidence, the controverted facts alleged in the SOR and as such the burden never should have shifted to the Applicant[.]" Appeal Brief at 2. As Applicant notes, the Government's responsibility to produce substantial evidence of security concern arises with regard to allegations that have been controverted. Directive ¶ E3.1.14. In the case before us, Applicant admitted the allegation that his

“mother, [siblings] . . . and mother-in-law are citizens and residents of Iraq.” SOR Answer, dated March 4, 2017. Therefore, the Government bore no duty to produce evidence regarding the foreign citizenship and residency of these relatives, although, in fact, Item 3 (SCA), Item 4 (Personal Subject Interview), and Item 5 (Counterintelligence-Focused Security Screening Questionnaire) constitute such evidence. When Applicant’s admissions about his relatives and the Government’s evidence of the same are evaluated in the context of the Judge’s official notice findings about the geopolitical situation in Iraq, they constitute substantial evidence of a heightened risk of foreign influence. *See* ISCR Case No. 15-06050 at 2 (App. Bd. Oct. 30, 2017) for the proposition that the Directive presumes a nexus between admitted or proved circumstances under any of the Guidelines and an applicant’s eligibility for a clearance. We resolve this issue adversely to Applicant.

The balance of Applicant’s brief is a challenge to the Judge’s weighing of the evidence. Applicant cites to what he considers Applicant’s tenuous connection to his relatives. He also argues that these relatives do not live in a part of Iraq that is particularly dangerous. We do not find this last assertion to be clearly borne out by the record. In any event, Applicant’s arguments consist of a disagreement with the Judge’s weighing of the evidence. Applicant’s brief does not show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Neither does the brief rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-08688 at 3 (App. Bd. Nov. 6, 2017). We give due consideration to the Hearing Office case that Applicant has cited. However, it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge’s decision. *See, e.g.*, ISCR Case No. 15-08162 at 2 (App. Bd. Nov. 3, 2017).

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: Michael Y. Ra'anan

Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Member, Appeal Board