

KEYWORD: Guideline B

DIGEST: To the extent that Applicant is arguing the Judge erred in finding that terrorists threatened him numerous times, we do not find his argument persuasive. Government Exhibit (GE) 4 supports that Judge's finding that insurgents threatened Applicant multiple times, including in letters and cell phone calls. We conclude that the Judge's material findings about the multiple threats are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. Adverse decision affirmed.

CASENO: 16-01900.a1

DATE: 04/19/2018

DATE: April 19, 2018

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 16-01900
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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 15, 2016, 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 hearing. On January 19, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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 became a naturalized citizen of the United States in 2013. He has been married for three years. He and his wife met in 2010 at their place of work. His spouse was born in Iraq, immigrated to the United States in mid 1990s, and is a naturalized citizen. The wife’s family members are all citizens or residents of the United States.

Applicant has several siblings. Four of these siblings are citizens and residents of Iraq. Applicant keeps in regular contact with his siblings. One of these siblings visited him in the United States in 2014. Applicant has traveled to Iraq on two occasions for work, the last time being about two years ago. He did not visit his siblings while working in Iraq between 2008 and 2010 and between 2015 and 2016. Two of his other siblings reside in Europe. The remaining siblings are residents of the United States.

Applicant denied the SOR allegation that terrorists threatened him “numerous times.” In his Answer to the SOR, he stated only one threat was made to his family while he was working with U.S. forces. This assertion contradicts statements he made during a counterintelligence interview in which he stated that he was “threatened multiple times by anti-coalition insurgents because he worked with U.S. Forces.” Decision at 2. The insurgents also left threatening messages on his cell phone and letters at his house. U.S. military officers recommended he be granted refugee status under a special immigrant visa program based on his work in dangerous situations and the specific threats he and his family received.

Iraq is plagued by violence caused by terrorist organizations such as the Islamic State of Iraq and the Levant (ISIL or Islamic State). These forces have targeted U.S. personnel and Iraqi civilians. Additionally, the U.S. State Department has warned U.S. citizens of this country about the dangers of traveling in Iraq. The country is plagued by human rights abuses and by systemic government corruption.

### **The Judge’s Analysis**

The Judge cited to evidence of Applicant's regular phone contact with his Iraqi siblings and focused on the threats that forced Applicant to leave Iraq as a refugee in 2007. She concluded Applicant's familial ties and the threats made against him when viewed in light of the geopolitical situation in Iraq established a heightened risk of foreign influence, and 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 her whole-person analysis, the Judge made four conclusions: 1) the geopolitical situation could result in exploitation of Applicant's family still in Iraq; 2) he has numerous continuing connections to Iraq as evidenced by his return trips; 3) he maintains regular contact with his siblings in Iraq; and 4) his inconsistent statements raising credibility concerns about which the Judge specifically stated, "I am not satisfied that he was completely frank about his description of the number and content of those threats." The Judge concluded Applicant had failed to meet his burden of persuasion to mitigate the security concerns.

### **Discussion**

Applicant appears to be challenging the Judge's conclusion that his ongoing family connections with siblings in Iraq create security concerns. Applicant cites to what he considers his tenuous connection to his relatives. He also argues that these relatives live in a peaceful part of Iraq and that the threats were twelve years ago. Applicant's arguments consist of a disagreement with how the Judge weighed the evidence and her credibility determination. 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).

In his appeal brief, Applicant states,

The threat my family received was over Twelve years ago and while I was living in Iraq. Since then I have traveled there multiple times during my deployments, I have never experienced any hostility during my travel. The family that I still have there have never experienced any hostility and they are living peacefully in Iraq.<sup>1</sup>

To the extent that he is arguing the Judge erred in finding that terrorists threatened him numerous times, we do not find his argument persuasive. Government Exhibit (GE) 4 supports that Judge's finding that insurgents threatened Applicant multiple times, including in letters and cell phone calls. We conclude that the Judge's material findings about the multiple threats are based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant's argument that the Government presented insufficient evidence is not supported by the record. 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 allegations that he had siblings who were citizens and residents of Iraq.

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<sup>1</sup> Appeal Brief at 2.

SOR Answer, dated December 28, 2016. He also acknowledged he had been threatened but denied it had been numerous times. Therefore, the Government bore no duty to produce evidence regarding the foreign citizenship and residency of these relatives, although, in fact, GE 1 (Security Clearance Application), GE 2 (Personal Subject Interview), and GE 4 (Counterintelligence-Focused Security Screening Questionnaire) constitute such evidence and the GEs also established there were multiple threats against Applicant. When Applicant's admissions about his relatives in particular and the Government's evidence of the same are evaluated in the context of the Judge's findings about the geopolitical situation in Iraq, they constitute substantial evidence of a heightened risk of foreign influence. The Directive presumes a nexus between admitted or proved circumstances under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.*, ISCR Case No. 15-06050 at 2 (App. Bd. Oct. 30, 2017). We resolve this issue adversely to Applicant.

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 Ra'anan

Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Member, Appeal Board

Signed: Charles C. Hale

Charles C. Hale  
Administrative Judge  
Member, Appeal Board