

KEYWORD: Guideline B; Guideline C

DIGEST: We gave due consideration to the Hearing Office case that Applicant has cited, but it is not binding precedent on the Appeal Board. The cited case is also distinguishable from this case because, among other matters, it involves a foreign country other than Iraq. Adverse decision affirmed.

CASENO: 16-02061.a1

DATE: 09/19/2018

DATE: September 19, 2018

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In Re:

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Applicant for Security Clearance

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) ISCR Case No. 16-02061  
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**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 November 29, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 11, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge David M. White denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline C have not been raised as an issue on appeal. Consistent with the following, we affirm.

### **The Judge’s Pertinent Findings of Fact**

Applicant was born in Iraq. From 2005 to 2007, he worked for U.S. forces in Iraq before coming to the United States on a special immigrant visa. From 2009 to 2012, he worked at a military installation in the United States. In 2013, he became a U.S. citizen. Shortly thereafter, he married an Iraqi citizen who came to the United States in 2016. She is a U.S. resident. They have one child born in the United States. Applicant has been employed by a defense contractor since 2015 and has been working again with U.S. forces in Iraq since 2016.

Applicant’s parents and his spouse’s parents are citizens and residents of Iraq. He and his wife have close and regular contact with their parents. His father works for a company operated by the Iraqi Government. He has visited his parents in Iraq about five times between 2009 and 2016. He also has siblings who are citizens and residents of Iraq. None work for the Iraqi Government. He has provided significant financial support to his Iraqi family members over the years.

Applicant served in sustained combat operations while working with U.S. forces, including enduring a personal assault and stabbing. “Senior military officers with whom he served wrote letters commending his courage, integrity, and trustworthiness in promoting their successful mission accomplishment. Applicant also received numerous citations commending his dedication and professional performance.” Decision at 3.

Iraq faces many challenges including sectarian and ethnic divisions. Numerous terrorist groups and anti-U.S. sectarian militias are active throughout the country. Threats of kidnapping and violence are high, and the State Department warns U.S. citizens to avoid traveling to Iraq. Human rights abuses have also been noted there.

### **The Judge’s Pertinent Analysis**

Applicant’s ongoing, close family connections in Iraq create a heightened risk of foreign pressure or attempted exploitation. Those relationships also create a potential conflict of interest between his obligation to protect sensitive information and his desire to help his family members in that country. “Applicant has demonstrated courage and compliance with U.S. security procedures

in the face of significant personal risk arising from his collaboration with U.S. forces in Iraq. Under Appeal Board precedent, this weighs favorably in assessing his likelihood of resolving future conflicts in favor of U.S. interests. However, his other connections to the United States are minimal and recent, as evidenced by his reference to, ‘my country in Iraq,’ in his 2015 e-QIP. Accordingly, Applicant failed to establish mitigation with respect to those relationships under [applicable mitigating conditions].” Decision at 6.

### **Discussion**

Applicant contends the Judge failed to consider all of the record evidence, failed to apply all of the mitigating conditions, and failed to examine properly the whole-person concept. For example, he argues that his family relationships in Iraq are causal and that his conduct, particularly in light of the attack on him while working with U.S. forces, demonstrates his security clearance worthiness. The Judge, however, made findings of fact about, and analyzed, those matters. Applicant’s arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient 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. 15-01717 at 4 (App. Bd. Jul. 3, 2017). We gave due consideration to the Hearing Office case that Applicant has cited, but it is not binding precedent on the Appeal Board. *Id.* The cited case is also distinguishable from this case because, among other matters, it involves a foreign country other than Iraq.

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* at 528. *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 E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board.