

KEYWORD: Guideline B

DIGEST: The Judge based his decision, for the most part, on evidence of Applicant's cooperation with the U.S and the considerable hardship and danger he faced as a result of that cooperation. It was appropriate for the Judge to consider this, in light of applicant's assumption of "a high level of risk on behalf of the U.S." We find no error in the manner in which the Judge balanced the conflicting considerations, including Applicant's service in a foreign military organization. The record in this case provides a reasonable basis for the Judge's conclusion that MC 8(b) applied with sufficient force to overcome the Government's security concerns under Guideline B. Favorable decision affirmed.

CASENO: 12-08823.a1

DATE: 05/06/2016

DATE: May 6, 2016

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In Re:)	
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-----)	ISCR Case No. 12-08823
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)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 2, 2015, 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 28, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry granted Applicant’s request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issue on appeal: whether the Judge’s favorable decision is arbitrary, capricious, and contrary to law, in that it is unsupported by the weight of the record evidence and fails to consider an important aspect of the case. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant was born and raised in Iraq. He was commissioned in the Iraqi military. After the U.S.-led coalition toppled the Iraqi regime and disbanded the military, Applicant joined coalition efforts to stabilize the country. He agreed to assist the U.S. because he agreed with this country’s values. “Applicant’s service was extraordinary.” Decision at 2. He assisted the U.S. in counter-terrorism operations, putting his life on the line in support of U.S. objectives. He survived multiple assassination attempts, and, in the mid-2000s, terrorists kidnaped and/or killed members of his family. A member of the U.S. military stated that despite threats to his life and safety, Applicant “never diminished his commitment to the common American and Iraqi goal of building a safe, more stable Iraq.” *Id.* at 3. Applicant and his immediate family have become naturalized citizens. Applicant’s mother and two of his siblings live in Iraq. Applicant talks with them about once a year. He has siblings who live in other countries.

Since the U.S. military withdrew from Iraq, sectarian and ethnic divisions have widened, threatening the country’s stability. U.S. citizens in Iraq are in danger of being kidnaped, and terrorist organizations operate within the country.

The Judge’s Analysis

The Judge concluded that Applicant’s circumstances met the criteria for mitigation under Mitigating Condition (MC) 8(b):

[T]here is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S. that

the individual can be expected to resolve any conflict of interest in favor of the U.S. interest. Directive, Enclosure 2 ¶ 8(b).

He stated that Applicant has been living in the U.S. for nearly a decade and is “profoundly committed to promoting U.S. values.” Decision at 5. He cited to evidence of Applicant’s service in the Iraqi military on behalf of U.S. objectives despite threats to his life and attacks on his family.

Discussion

Department Counsel’s brief includes an extensive summary of the record evidence, providing many favorable details about Applicant’s service on behalf of U.S. objectives that the Judge did not include. Department Counsel does not challenge the Judge’s findings about Applicant’s bravery in the face of multiple threats to himself and his family. However, she argues that the record does not support the Judge’s favorable application of MC 8(b). She argues that Applicant has few ties within the U.S. and that his Iraqi relatives are highly visible, having been targeted many times. She also states that Applicant’s service in the Iraqi military entails a possible conflict of interest.

We have evaluated Department Counsel’s argument in light of the record. The Judge based his decision, for the most part, on evidence of Applicant’s cooperation with the U.S. and the considerable hardship and danger he faced as a result of that cooperation. It was appropriate for the Judge to consider this, in light of prior cases in which we held that an applicant’s assumption of “a high level of risk on behalf of the U.S.” constitutes important evidence under MC 8(b). ISCR Case No. 06-25928 at 4 (App. Bd. Apr. 9, 2008). However, although such service should be addressed, it will not necessarily be dispositive in any given case. It must be balanced against other evidence that might weigh against an applicant and diminish the probative force of his risks on behalf of the U.S. With that understanding, we find no error in the manner in which the Judge balanced the conflicting considerations, including Applicant’s service in a foreign military organization. The record in this case provides a reasonable basis for the Judge’s conclusion that MC 8(b) applied with sufficient force to overcome the Government’s security concerns under Guideline B.

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____
James E. Moody
Administrative Judge
Member, Appeal Board