

KEYWORD: Guideline B

DIGEST: The Judge erred in her analysis of the risks arising from his support to U.S. forces in Iraq. The Judge focused on the risks to Applicant’s family arising from his support to U.S. forces and did not address how that support weighs in his favor in analyzing his national security eligibility. The Board has recognized that, when an applicant has established by credible, independent evidence that his or her compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to national security, those circumstances can give credibility to an applicant’s assertion that he can be relied upon to recognize, resist, and report attempts at coercion and exploitation. Adverse decision remanded.

CASENO: 17-00629.a1

DATE: 05/24/2018

DATE: May 24, 2018

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In Re:)	
-----)	ISCR Case No. 17-00629
)	
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 April 3, 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).¹ Applicant requested a hearing. On February 1, 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we remand the decision to correct identified errors.

The Judge’s Findings of Fact

Applicant, who is 30 years old, was born in Iraq. From about 2006 to 2008, he worked for U.S. forces in Iraq. Although terrorists never threatened him or his family, they consider all translators to be traitors.

In 2008, Applicant entered the U.S. under a special immigrant visa program. Between 2010 and 2012, he returned to Iraq to marry and to live with his family for six months. He became a U.S. citizen in 2014. After obtaining his citizenship, he returned to Iraq for a month and then worked in another country and Iraq until the latter part of 2015. In early 2016, he started to work for his current employer and deployed to Iraq. He does not own any property in Iraq. Three U.S. military officers consider Applicant to be extremely responsible and trustworthy.

Applicant’s father is deceased. His mother is a citizen and resident of Iraq. She retired after working for the Iraqi Government and receives a small pension. Applicant contacts her regularly and provides her with less than \$2,000 annually in financial support. While he was working in Iraq, he called his mother frequently, and she visited him. He has a brother who is a citizen and resident of Iraq. He communicates with him only at holidays. He has two other siblings who are Iraqi citizens, but reside in the United States. His mother-in-law and four siblings-in-law are citizens and residents of Iraq. His mother-in-law is a housewife and his siblings-in-law are students. His wife communicates with those siblings when she calls her mother.

Iraq faces many challenges, including sectarian and ethnic divisions. Numerous terrorist groups are active throughout Iraq, and the threat of violence is high there. The Department of State warns U.S. citizens that all travel to Iraq should be avoided.

The Judge’s Analysis

Given the terrorists threats in Iraq, Applicant’s family relationships in that country create a heightened risk of foreign pressure or exploitation. Those relationships are ongoing and create a

¹ The two Guideline B allegations were amended at the hearing. Applicant had no objection to the amendments and the record remained open after the hearing to provide Applicant the opportunity to submit additional evidence pertinent to the amendments. Decision at 2.

potential conflict of interest between Applicant's obligations to protect sensitive information and his desire to help family members. His frequent visits to Iraq before and after becoming a U.S. citizen, including a recent long deployment, demonstrate longstanding and substantial commitments to Iraq. While there are factors that weigh in his favor, he has failed to mitigate the security concerns pertaining to foreign influence.

Discussion

In deciding whether the Judge's rulings or conclusions are erroneous, we will review the decision to determine whether: 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. 14-02563 at 3 (App. Bd. Aug. 28, 2015).

In this case, Applicant contends the Judge erred in concluding that his "recent long deployment for work' to Iraq was a disqualifying condition[.]" Appeal Brief at 5, citing Decision at 8. Applicant's contention is persuasive. While the Judge did not categorize Applicant's recent deployment as a "disqualifying condition," she considered his deployment to be a factor weighing against his national security eligibility by stating it demonstrated longstanding and substantial commitments to Iraq. In general, an applicant's deployment to a combat zone in support of U.S. forces is not a factor that weighs against his or her national security eligibility. On the contrary, such deployments tend to establish various mitigating conditions such as ¶ 8(b) ("there is no conflict of interest . . . because . . . the individual has such deep and longstanding loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest");² ¶ 8(d) ("the foreign . . . activities are on U.S. Government business");³ and ¶ 8(f) ("the value or routine nature of the foreign business . . . is such that [it is] unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.")⁴ Given the record in this case, we conclude the Judge erred by weighing Applicant's recent deployment in an arbitrary and capricious manner and in failing to address the application of mitigating conditions 8(d) and 8(f). More specifically, the Judge failed to articulate a satisfactory basis for her unfavorable conclusion regarding Applicant's recent deployment and, as discussed more fully below, that conclusion appears to run counter to the record evidence.

² Directive, Encl. 2, App A ¶ 8(b) states, "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest[.]"

³ Directive, Encl 2, App. A ¶ 8(d) states, " the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee[.]"

⁴ Directive, Encl 2, App A ¶ 8(f) states, "the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual."

Applicant also contends that the Judge erred in her analysis of the risks arising from his support to U.S. forces in Iraq. We agree. The Judge focused on the risks to Applicant's family arising from his support to U.S. forces and did not address how that support weighs in his favor in analyzing his national security eligibility. The Board has recognized that, when an applicant has established by credible, independent evidence that his or her compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant made a significant contribution to national security, those circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report attempts at coercion and exploitation. *See, e.g.*, ISCR Case No. 06-25928 at 3-4 (App. Bd. Apr. 9, 2008).

In this case, the record contains statements from U.S. military members attesting to the support Applicant provided in dangerous circumstances. In 2006, Applicant served with a Quick Reaction Force in Iraq. Exhibit (AE) A and SOR Response. One senior enlisted member, who served with Applicant during that time period, stated:

[Applicant] . . . served alongside my men during moments of intense combat operations. [He] was regularly trusted with sensitive information and privy to plans for numerous operations. I nor anyone else ever questioned his loyalty to the men, the mission, or the United States. [His] performance was exemplary and he was often called upon by my company and battalion commander to assist in higher level missions. I have the utmost trust in his dedication, loyalty, and patriotism.⁵

Applicant testified that he qualified for a special immigrant visa due to his support of U.S. forces under circumstances that presented dangers. Tr. at 54 and 62-63. Another senior enlisted member also noted that Applicant served honorably in "an arduous, high OPTEMPO, combat environment" in 2017. AE F. Such evidence demonstrates that Applicant has repeatedly been willing to assume a high level of risk on behalf of the U.S. and shows his ties and sense of obligation to the U.S. could be sufficiently strong enough to support a favorable application of mitigating condition 8(b). *See* ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006) (An applicant's work in support of U.S. forces in Afghanistan occurred "in the context of dangerous high-risk circumstances in which [he] made a significant contribution to national security.") *See also* ISCR Case No. 04-12363 at 2 (App. Bd. Jul. 14, 2006); ISCR Case No. 07-00034 at 2-3 (App. Bd. Feb. 5, 2008); and ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012). Here, the Judge erred by failing to analyze the Guideline B security concerns in the context of Applicant's record of support to U.S. forces under dangerous circumstances.

The case is remanded to the Judge for issuance of a new decision in accordance with the Directive that corrects the errors identified above. On remand, the Judge is permitted to reopen the record on the motion of either party.

⁵ AE F.

Order

The Decision is **REMANDED**.

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