



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 17-00284
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

06/19/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for access to classified information. The evidence is sufficient to mitigate the security concern based on her ties to Iraq, the country of her birth, from which she fled. In addition, Applicant resolved multiple delinquent debts, caused largely by periodic unemployment, thereby mitigating the security concern for financial considerations. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on March 2, 2015.¹ This document is commonly known as a security clearance application. Thereafter, on March 1, 2017, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent

¹ Exhibit 1.

Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guidelines known as Guideline B for foreign influence, Guideline C for foreign preference, and Guideline F for financial considerations.

Applicant, with assistance of counsel, answered the SOR on April 24, 2017. Her answers to the Guideline B matters were mixed; she admitted the allegations under Guidelines C and F; she provided extensive explanations and supporting documentation; and she requested a hearing.

The case was assigned to me on October 5, 2017. Scheduling the hearing was delayed due to Applicant's deployment overseas. The hearing took place as scheduled on April 17, 2018. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Government Exhibits 1-10 and Applicant's Exhibits A-X. The hearing transcript was received on April 27, 2018.

Procedural Matters

In closing argument, Department Counsel conceded that the Guideline C foreign preference matters in the SOR should be decided in Applicant's favor.² The concession was based on the undisputed fact that the SOR allegations do not raise a security concern under the disqualifying conditions of the now applicable version of Guideline C, which has been in effect since June 8, 2017. Department Counsel's concession is well taken, and the Guideline C matters are decided for Applicant without further discussion.

Findings of Fact

Applicant, a native of Iraq, is a 49-year-old employee who requires a security clearance for her job as a linguist in support of the U.S. Armed Forces. Her formal education includes a bachelor's degree in physical education awarded in 1992 by an Iraqi university. She has never married and has no children. She has six siblings; two sisters are resident citizens of Canada; and two sisters and two brothers live in the United States. Concerning the latter, three of the siblings are U.S. citizens while the fourth is a permanent resident alien who intends to obtain U.S. citizenship. Applicant also has 13 nieces and nephews in the United States or Canada. When not working overseas, Applicant lives with a sister in the United States.

Applicant worked for a privately-owned import-export company in Iraq during 1996-2001 (as alleged in SOR ¶ 1.c). The company was a Turkish firm doing business in Baghdad. While employed for this company, the Iraqi government would, from time to time, request information about the Turkish nationals associated with the company.³ Over time, the harassment became more aggressive to the point where Applicant

² Exhibit 1.

³ Tr. 53-54.

considered it threatening to her. As a result, she, along with a sister and her mother, left Iraq and went to Jordan where she remained for several months. She traveled to the United States in 2002 and applied for asylum, which was subsequently granted by U.S. immigration officials. She became a permanent resident alien and eventually obtained U.S. citizenship in 2011.

Applicant has been employed steadily (although not continuously) since her arrival in the United States.⁴ She worked in retail jobs during 2003-2007. That changed in 2007, when she began working as a linguist in support of the U.S. Armed Forces. She worked as a linguist in Iraq until April 2011, when that employment ended due to the withdrawal of U.S. forces. During the next four years (2011-2015), Applicant was periodically unemployed for a total of about two years and working in jobs that did not pay as well as working as a linguist. During this time, she also attempted to start a small business in Iraq by purchasing merchandise in the United States and reselling the goods in Iraq, but the business was not a success.⁵ In October 2016, Applicant began her current employment as a linguist working in support of the U.S. Armed Forces in Iraq (she travelled to the United States for the hearing and then returned to Iraq).⁶

The SOR alleges in ¶ 1.a that Applicant has “extended family members and friends who are citizens and residents in Iraq.” Applicant explained that the friends refers to other linguists and interpreters who she worked with in Iraq during 2007-2011, all of whom have since immigrated to the United States and have become U.S. citizens.⁷ Concerning the extended family members, she explained that all her immediate family are in the United States and Canada, that she had one uncle in Iraq who passed away in November 2017, and she now has one cousin who is a resident in and citizen of Iraq.⁸ She speaks by telephone with this cousin about twice a year on religious holidays (Easter and Christmas).

The SOR alleges in ¶ 1.b that Applicant was then currently “sponsoring” her sister, brother-in-law, and two nephews as resident aliens in the United States, who are citizens of Iraq. Applicant denied and rebutted this allegation as follows.⁹ Those relatives entered the United States with the assistance of the International Organization of Migration (IOM), which is a non-governmental organization, affiliated with the United Nations, in the field of migration that works with governmental, intergovernmental, and non-governmental partners. She was in fact deployed overseas when her relatives

⁴ Exhibit 1.

⁵ Tr. 63-64.

⁶ Tr. 52-53.

⁷ Tr. 22-23.

⁸ Tr. 23-25.

⁹ Tr. 28-30.

entered the United States. Her assistance was limited to offering them a place to live, since she had a big house, and they paid their own expenses.

The SOR also alleges a history of financial problems or difficulties consisting of eight charged-off or collection accounts for a total of about \$40,000. The delinquent accounts are established by Applicant's admissions in her answer to the SOR as well as documentary evidence. She attributes her financial problems to unemployment that occurred after her linguist job ended in 2011, which forced her to use credit cards to pay for living expenses.¹⁰ Applicant has since paid or settled the eight delinquent accounts, as reflected in an April 2018 credit report and Applicant's documentary evidence.¹¹ She submitted the majority of her documentary evidence with her answer to the SOR. She now earns an annual salary of about \$80,000, and she has about \$12,000 in savings.¹²

Applicant's work as a linguist in Iraq in support of the U.S. Armed Forces put her in harm's way more than once.¹³ During 2007-2011, a period of about four years, she worked with units of the U.S. Army, which resulted coming under direct and indirect fire. She often accompanied an Army unit on offensive missions. On one such mission, the patrol she was on was hit by an IED, resulting in a soldier's death. Since her return to Iraq in 2016, she has worked in an office setting with a focus on interpreting and translating sensitive documents. For her efforts, she received multiple certificates of appreciation and several highly favorable letters of recommendation from people she served with in Iraq.¹⁴ Her current supervisor, a junior Army officer, described Applicant as an incredibly dedicated and efficient employee who has demonstrated "the utmost diligence, initiative, and proficiency."¹⁵

Administrative or official notice is taken of certain facts about Iraq as described in Department Counsel's written request.¹⁶ The situation in Iraq is well known within the Defense Department and it is unnecessary to discuss those facts at great length here. In general, the overall security situation in Iraq is fluid and at times quite unstable if not deadly after many years of war. The risk of terrorism remains high (for example, a January 2018 double-suicide bombing in central Baghdad killed dozens of people).

¹⁰ Tr. 34-35.

¹¹ Tr. 35-37; Exhibits 8, D-H, U, V, and W.

¹² Tr. 40, 48.

¹³ Tr. 57-61.

¹⁴ Exhibits K and L.

¹⁵ Exhibit O.

¹⁶ Exhibit 10.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹⁷

It is well-established law that no one has a right to a security clearance.¹⁸ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²⁰ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²¹

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²² An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

¹⁷ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁹ 484 U.S. at 531.

²⁰ 484 U.S. at 531.

²¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²² Directive, ¶ 3.2.

²³ Directive, ¶ 3.2.

²⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁵ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.²⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁷

Discussion

The gravamen of the SOR under Guideline B is whether Applicant's ties to Iraq should disqualify her from access to classified information. Under Guideline B for foreign influence,²⁸ the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern is:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.²⁹

Given the evidence of Applicant's ties to Iraq, I have considered the following disqualifying and mitigating conditions under Guideline B as most pertinent:

AG ¶ 7(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions of activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign

²⁶ Directive, Enclosure 3, ¶ E3.1.15.

²⁷ Directive, Enclosure 3, ¶ E3.1.15.

²⁸ AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

²⁹ AG ¶ 6.

individual, group, organization, or government and the interests of the United States; and

AG ¶ 8(b) 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.

Based on U.S. concerns about the risk of terrorism, Iraq meets the heightened-risk standard in AG ¶ 7(a). This conclusion is based on the facts set forth in Department Counsel's written request for administrative notice.³⁰

Applicant's ties to Iraq, although now minimal, are sufficient to raise a concern under Guideline B. Applicant's cousin is a citizen-resident of Iraq, and Applicant communicates with her twice per year on religious holidays. With that said, Applicant has the signs of being a mature and responsible person. She has lived and worked in the United States since shortly after her arrival here in 2002, a period of more than 15 years. She is seeking to support herself by working as a linguist in support of the U.S. Armed Forces in Iraq, which remains a high-risk endeavour. To that end, she spent four years (2007-2011) in Iraq working in a dangerous and high-risk environment, which is a circumstance that weighs heavily in her favor. Although she has both family and cultural ties to Iraq, she also has strong family ties to the United States, as most of her large immediate family reside in the United States. Her ties or contacts with a single cousin in Iraq are about what you would expect given the circumstances. There is nothing out of the ordinary about her ties to Iraq.

This process is not a zero-risk program, because nearly every applicant presents some risk or concern. Many security clearance cases come down to balancing that risk or concern. Here, on balance, I am satisfied that the strength of her ties to the United States greatly outweigh and overcome her ties to Iraq. Indeed, I would describe Applicant's ties to Iraq at this point in her life as relatively minimal. This is not a case of "divided allegiance" with an applicant who has one foot in each country. To the contrary, Applicant appears to have both feet planted here in the United States and her ties to the United States will continue to grow stronger over time. Viewing the record evidence as a whole, Applicant can be expected to resolve any potential concern or potential conflict of interest in favor of the U.S. interest.

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

³⁰ Exhibit 5.

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .³¹

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. With that said, it is also evident that her financial problems are related to periodic unemployment and her unsuccessful small-business venture. Applicant has since paid or settled the eight delinquent accounts, and there is ample documentation in support of Applicant's case. Indeed, the Government's most recent credit report, from April 2018, shows that the eight accounts are paid or settled.³² Applicant is now gainfully employed as a linguist and there is no indication of similar financial problems.

Following *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighted the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that she met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

³¹ AG ¶ 18.

³² Exhibit 8.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline C:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	For Applicant
Subparagraphs 3.a – 3.h:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge