



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



In the matter of: )  
)  
) ISCR Case No. 07-01195  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: Fadi Toma, Esquire

March 6, 2008

---

**Decision**

---

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**History of Case**

On November 30, 2006, Applicant submitted his Security Clearance Application (SF 86). On August 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on August 13, 2007. He answered the SOR in writing through counsel on October 16, 2007, and requested a hearing

before an Administrative Judge. DOHA received the request on October 18, 2007. Department Counsel was prepared to proceed on November 9, 2007, and I received the case assignment on December 3, 2007. DOHA issued a Notice of Hearing on December 19, 2007, and I convened the hearing as scheduled on January 23, 2007. The Government offered Exhibits (Ex.) 1 through 3, which were received into the record without objection. Applicant testified and submitted Exhibits (Ex.) B through D, and G through I that were admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on February 1, 2008.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Iraq. (Tr. 10-11.) The request and the attached documents are included in the record as Administrative Exhibits (AE) I through VII. Applicant's counsel did not object to my consideration of those Exhibits. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, dated October 16, 2007, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 54 years old. He was born in Alqosh, Iraq, a region in the northern part of Iraq, commonly referred to as the Kurdish area. He attended high school and undergraduate college there, receiving a Bachelor's Degree in Liberal Arts with an emphasis on languages. (Tr. 14). As required by the Iraqi government, he served eight years in its army after completing his education. (Tr. 42).

In May 1992, Applicant, his wife and two children immigrated to the United States on a Family Visa because of the threat of religious persecution against Christians under Saddam Hussein. (Tr. 31). In July 1998, he became a naturalized U.S. citizen. His wife and two children also became naturalized U. S. citizens. Another child was born in the United States. All of his family lives in the United States. His wife's family resides in Canada. (Tr. 33).

Both of Applicant's parents were born in Iraq. He is one of four children, all born in Iraq. His three siblings are married, have families, and are resident citizens of Iraq. His father is deceased and his mother, age 79, has Alzheimer's disease. She no longer recognizes Applicant and is not expected to live much longer. (Tr. 22-24). She resides with his brother. His siblings are farmers and do not have any connections to the Iraqi government. (Tr. 26). Generally, he speaks to them once every four to six months. He

has a long distance relationship with his siblings. "This is no [sic] like a close relationship." (Tr. 22).

In November 2002, Applicant joined the U.S. Army as one of the first contractor linguists to assist in the war on terror. (Tr. 34). He initially went to Kuwait and then returned to Iraq in April 2003, for the first time since leaving it in 1992. He remained in Iraq until January 2005 when he was sent to Qatar. He returned home in October 2005. Prior to going to Iraq, he received an interim Top Secret security clearance that allowed him access to classified information. He took a polygraph test prior to receiving the clearance. (Tr. 47-48). In describing his work with the Army, he stated, "I think I did my best to help. This is my country now. This is my home, so I decided to help our troops there. I saved lives and prevented many injuries through my translations." (Tr. 18).

In December 2005, Applicant filed a Petition for Alien Relatives for his two sisters and their families. He did not file one for his aged mother or brother. While in Iraq, he spoke several times a week (over a period of a month) to his sisters about information needed for filing the Petition after receiving letters from the U.S. Immigration Department. (Tr. 25; Ex. 3). His sisters visited him twice while he was stationed in Iraq. (Tr. 32).

Applicant owns a house and a piece of property in the United States. He also has U. S. bank accounts. (Tr. 21). He does not own any property in Iraq. There is no derogatory information concerning his police or financial records. He has never been fired from a job. He has never been arrested. He has never used illegal drugs, or been involved in an alcohol-related incident. (Ex.1).

Applicant submitted several exhibits attesting to his capabilities and contributions to the U.S. Armed Forces' efforts in the war on terror. According to his performance evaluations for the years 2003 and 2004, Applicant performed an outstanding job, exceeding expectations. (Ex. B). In November 2003, his U. S. Army commanding officer wrote, "Throughout his tenure with us, he has performed his duties in an exemplarily manner. . . Bottom line, [Applicant] has truly become indispensable to our operations." (Ex. C at 2). Another commanding officer noted in October 2004 that Applicant's "superior knowledge of the Arabic language helped facilitate and exploit raw intelligence into actionable intelligence in support of Brigade operations." (Ex. C at 3). After working with him for four months, a different commanding officer indicated that Applicant "has a firm grasp of the mission, knowledge of the country and culture, a great work ethic, and dedicated mission accomplishment." (Ex. C at 4). A captain in the Army stated "I have not met many men in my short twenty six years who compare to the moral turpitude, devotion to duty and genuine care for the prosperity of a people that [Applicant] exhibits." (Ex. C at 1). There is no evidence in the record that while holding a security clearance in Iraq, Applicant breached any security policies or procedures.

Applicant credibly and sincerely asserted his pride of U.S. citizenship at his hearing and desire to resume his work with the U.S. Army. He currently works as a cashier.

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have target the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services.

I also take administrative notice of the fact that the northern area of Iraq, occupied by the Kurdish people, has had a functioning democratic form of government for approximately ten years. It is more stable, appreciative of the support of the United States, and more friendly to the presence of the United States forces than other parts of Iraq.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes nine conditions that could raise a security concern, three of which may be disqualifying in this case, including:

(a) contact 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;<sup>1</sup>

---

<sup>1</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

In this case, Applicant has contact with his three siblings, who are resident citizens of Iraq. He has limited contact with his elderly mother because of her mental impairment. He has sufficient familial connection to them, such that he has filed a Petition to help them immigrate to the United States. His relationship and contact with three family members potentially creates a heightened risk of foreign pressure or attempted exploitation because terrorists in the Middle East seek intelligence and are hostile to United States' interests. In addition, in 2004 his sisters visited him while he was working in Iraq, which could have created a risk of exploitation at that time.

The Government produced substantial evidence of these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition.

Three Foreign Influence Mitigating Conditions under AG ¶ 8 are potentially applicable to the disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or 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 individual, group, organization, or government and the interests of the U.S.;

(b) there 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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶¶ 8(a) and 8(c) have some application because Applicant's siblings reside in the Kurdish area of Iraq, known to be more democratic and less hostile to the United States. His relationships with those siblings have become more distant in nature, although he acknowledges that he is assisting his sisters with their pursuit of immigration to the United States. His contacts with family members in Iraq are relatively infrequent since 2004. Although there is a remote possibility that terrorists could attempt to coerce or threaten Applicant through his siblings, it is highly unlikely.

Applicant established application of AG ¶ 8(b). Based on his relationship and depth of loyalty to the U.S., he can be expected to resolve any conflict of interest in favor of the U.S. interest. He has lived in the United States since 1992 and did not return to Iraq until his employment with the U. S. Army in 2003. The members of his immediate family are naturalized U.S. citizens, residing in the United States. He owns property and holds bank accounts in the United States. In contrast, his Iraqi interests have become minimal over the years. He does not own property in Iraq and has limited contact with his family members living there. There is no evidence that he has connections or contact with any people other than his family members.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors (APF) listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." ". Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," is the most relevant of the nine APFs to this adjudication.<sup>2</sup> Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the

---

<sup>2</sup> See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess "the realistic potential for exploitation"), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Four circumstances weigh against Applicant in the whole person analysis. First, there is a significant risk of terrorism and various human rights abuses in Iraq. More importantly for security purposes, terrorists are hostile to the United States and actively seek classified information. Terrorists, and even friendly governments, could attempt to use Applicant’s siblings and mother to obtain such information. Second, he had numerous connections to Iraq before he immigrated to the United States in 1992. Following his birth, he spent his formative years there. He was educated at an Iraqi university and subsequently was conscripted into its army. Third, his mother and three siblings remain resident citizens of Iraq. Fourth, he has some contact with his siblings because he is trying to obtain resident alien status for them in the United States.

Substantial mitigating evidence weighs in favor of granting Applicant a security clearance. He is a mature person, who has lived in the United States for 15 years, and has been a naturalized citizen for about ten years. His spouse has been living in the United States since 1992 and is a naturalized citizen, as are two of his Iraqi born children. One of his children was born here. Out of his sense of patriotism and love for the United States, he joined the U.S. Army, as was one of the first Arabic-speaking linguists. His ties to the United States, which he refers to as “my country,” are much stronger than his ties to his three siblings and elderly mother living in northern Iraq. There is no evidence he has ever taken any action that could cause potential harm to the United States. He takes his loyalty to the United States seriously, and he has worked diligently for a defense contractor for several years in an important capacity for the U.S. Army. His supervisors assess him as loyal, trustworthy, conscientious, and responsible, giving him excellent evaluations and praising his dedication to the cause of freedom in Iraq. He is an excellent family member, employee and U.S. citizen. After leaving Iraq in 1992, he never returned, until he worked with the U.S. Army in April 2003. No witnesses recommended denial of his security clearance. There is not any derogatory information about him in the record.

Applicant held a security clearance during his tenure with the U.S. Army without any indication that he breached security policies or procedures. While that fact is not normally to be considered a factor in granting a clearance, the Appeal Board noted in ISCR Case No. 05-03846 as follows:

As a general rule, Judges are not required to assign an applicant’s prior history of complying with security procedures and regulations significant probative value for purposes of refuting, mitigating, or extenuating the security concerns raised by the applicant’s more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd.



May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the nation security. See, e.g. ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.<sup>3</sup> Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

SHARI DAM  
Administrative Judge

---

<sup>3</sup> I conclude that the whole person analysis weighs heavily toward approval of his security clearance. Assuming a higher authority reviewing this decision determines the mitigating conditions articulated under AG ¶8 do not apply and severs any consideration of them, I conclude the whole person analysis standing alone is sufficient to support approval of a security clearance in this case.