



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



In the matter of:)
)
) ISCR Case No. 16-01164
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

01/08/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence and foreign preference security concerns relating to his connections to Iraq. His father and sister live in Kurdistan, a region of Iraq. Eligibility for access to classified information is granted.

History of the Case

On February 12, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On September 22, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under the foreign influence and foreign preference guidelines.

On October 30, 2016, Applicant responded to the SOR and requested a hearing. (Hearing Exhibit (HE) 3) On March 22, 2018, Department Counsel was ready to proceed. On May 2, 2018, the case was assigned to another administrative judge. On August 14, 2018, the case was transferred to me. On November 8, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 13, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered three exhibits; Applicant provided eight exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 13-17, 33-36; Government Exhibits (GE) 1-3; Applicant Exhibits (AE) A-I) On January 2, 2019, I received the transcript of the hearing.

Procedural Ruling

Department Counsel offered summaries for administrative notice concerning foreign influence and foreign preference security concerns raised by Applicant's connections to Iraq. Applicant did not object to me taking administrative notice of facts concerning Iraq, and I granted Department Counsel's motion. (Tr. 9) Department Counsel and Applicant indicated they had no objection to me taking administrative notice of facts from the U.S. Department of State website concerning Iraq.¹ (Tr. 9-10) Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Portions of the Department Counsel's requests are quoted without quotation marks and footnotes in the Iraq section of this decision, *infra*. The first two paragraphs and the last paragraph in the Iraq section are from the State Department website U.S. Relations with Iraq Fact Sheet, and the remainder is from Department Counsel's administrative notice request.

¹ The first two paragraphs and the last paragraph in the Iraq section of this decision are from the U.S. Department of State website, "U.S. Relations With Iraq Fact Sheet," Bureau of Near Eastern Affairs (Apr. 28, 2017), <https://www.state.gov/r/pa/ei/bgn/6804.htm>. Statements about the United States' relationship with Iraq from the Department of State are admissible. See ISCR Case No. 02-00318 at 5 (App. Bd. Feb. 25, 2004).

Findings of Fact²

Applicant admitted all of the SOR allegations with some clarifications. (Tr. 10; HE 3) He also provided mitigating information. (HE 3) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 56-year-old linguist, and DOD contractors have employed him since April 2015 in Iraq. (Tr. 23) Shortly after his hearing, he returned to Iraq to continue his linguist duties. (Tr. 26) His annual salary as a linguist is \$80,000. (Tr. 23) Before becoming a linguist, he worked in a hotel as a cook. (Tr. 23) In Iraq, before coming to the United States, he worked in the oil industry. (Tr. 47) Applicant and his family are Roman Catholic,³ and he and his wife are from the Kurdistan region of Iraq. (Tr. 51-52, 54)

In 1984, Applicant received a technical degree with a specialty in petroleum. (AE A) From 1985 to 1987, he performed mandatory service in the Iraqi army. (AE A) In 1989, he married, and his children are ages 24, 27, and 28. (Tr. 18-20) His spouse is 56 years old. (Tr. 22) His children are citizens and residents of the United States. (Tr. 19-21) His father-in-law and mother-in-law are citizens and residents of the United States, and in 2006, they arranged for Applicant, his spouse, and their children's immigration to the United States from Iraq. (Tr. 21-22, 53) In 2012, Applicant and his spouse were naturalized as U.S. citizens. (Tr. 52) He has property in the United States including a home and about \$22,000 in his U.S. bank account. (Tr. 24; AE F)

The SOR alleges that Applicant has three relatives living in Iraq. His father and one sister are citizens and residents of Kurdistan, a region of Iraq. (Tr. 26; SOR ¶¶ 1.a and 1.b; GE 1) His father and sister live together. (Tr. 27) His father is 84 years old and suffers from cancer and high blood pressure. (Tr. 38) His mother is deceased. (Tr. 40) His most recent visit with his father was in 2012, and he most recently communicated with his father or sister two or three years ago. (Tr. 27-28) He does not send money to his father or sister in Iraq. (Tr. 28) He does not own property or bank accounts in Iraq. (Tr. 28-29) When his father dies, he does not plan to go to Iraq for his father's funeral, and his father's property in Iraq will go to his sister in Iraq. (Tr. 39-41) His only visits to Iraq after 2012 were on behalf of his employer. (Tr. 41)

Applicant has a sister who lived in Iraq and is a citizen of Iraq. She currently resides in Germany with her husband. (Tr. 29; SOR ¶ 1.c) He communicates with his sister in Germany, who provides information to Applicant about his family in Iraq. (Tr. 39)

² The facts in this decision do not specifically describe employment, names of witnesses, names of other groups, or locations in order to protect Applicant's and his family's privacy. The cited sources contain more specific information.

³ In accordance with "well established DoD policy [Applicant and his family's] religious affiliation play[ed] no part" in this decision. ISCR Case No. 08-06795 at 6 n. 3 (App. Bd. May 25, 2012).

Foreign Preference

Applicant is not fluent in English. He admitted twice that he voted in an Iraqi election in 2014. (Tr. 30; SOR response; Officer of Personnel Management (OPM) personal subject interview (PSI); GE 2) In his OPM PSI, which is the investigator's summary of his statement, he said he voted because he wanted to help Iraq become a better democratic country like the United States. (Tr. 44; GE 2) He may have simply agreed with the OPM investigator's statements about voting. Applicant explained in broken English, "It's not a vote. There was misunderstood for me in that question, because they, did you practice or did you exercise this election. I said yes. Yeah I work on it. I'm not vote in it." (Tr. 31) He said he did not understand English "very good," and "I work there. It's not vote." (Tr. 44) "I see a lot of Iraqis they come to vote. That one they vote in Iraq and they vote. For that I say it's allowed to Iraqis to vote who's living in the U.S. . . . So for that I say they allowed to me. But I'm not voted on." (Tr. 45-46) He was unable to clarify the content of the summary in his OPM PSI, possibly because he could not understand the questions about it; however, he insisted that he did not vote in the Iraqi election. (Tr. 49)

In 2010 and 2014, Applicant worked as a volunteer while living in the United States to help expatriate Iraqis living in the United States vote in Iraqi elections. (Tr. 31-32, 47) He was paid in 2014; however, he was unsure if he was paid in 2010 for this work. (Tr. 31-32; 42-43) He did not say whether or not the Iraqi or U.S. government or some other entity paid him in 2014.

Applicant did not believe he continued to have Iraqi citizenship, and in any event, he was willing to renounce his Iraqi citizenship. (Tr. 50)⁴ In 2012, he took the Naturalization Oath of Allegiance to the United States of America (AE H) which states:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.⁵

⁴ The Iraqi Council of the Presidency issued Article 10(I), which states, "An Iraqi who acquires a foreign nationality shall retain his Iraqi nationality, unless he has declared in writing renunciation of his Iraqi nationality." Iraqi Official Gazette Issue 4019 dated March 7, 2006, No. 26, <https://www.refworld.org/pdfid/4b1e364c2.pdf>.

⁵ The language of the current Oath of Allegiance is found in the Code of Federal Regulations Section 337.1 and is closely based upon the statutory elements in Section 337(a) of the Immigration and Nationality Act. U.S. Citizenship and Immigration Services, 8 U.S.C. § 1448, <https://www.uscis.gov/citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>.

Character Evidence

Applicant serves as a linguist for the U.S. Army in Iraq. (Tr. 25) He goes on patrols outside his base with soldiers, and he wears a helmet and vest outside his base. (Tr. 25; AE I) He is not permitted to carry a weapon. (Tr. 26) He does not visit his family in Iraq. (Tr. 26) He is not authorized to leave the Army base or to have visitors at the Army base. (Tr. 26) He provided photographs of Army personnel he served with in Iraq. (Tr. 32-36; AE I) He was present in camp when an Islamic State of Iraq and Syria (ISIL) vehicle-borne improvised explosive device (IED) exploded and caused damage to his camp. (Tr. 36-37; AE I) ISIL or some other terrorists fired at his patrol three times when he was in Iraq; however, he was not injured. (Tr. 51)

On April 19, 2018, an Army colonel and Task Force commander, who served with Applicant in Iraq from August 2017 to April 2018, wrote:

[Applicant's] dedication, professionalism and positive demeanor positively impacted the Task Force's ability to communicate, coordinate and execute operations in close partnership with Iraqi senior leaders. [Applicant] could always be counted upon to assist with requirements, going above and beyond to accomplish the mission. His superb knowledge of the language and culture directly impacted the unit's ability to achieve mission success and he was an indispensable member of the team.

(AE B). A major who served with Applicant in 2017 lauded Applicant for his professionalism, diligence, and contributions to mission accomplishment. (AE B) In 2016, an Infantry lieutenant colonel commanding a battalion observed that Appellant enthusiastically volunteered to move with the unit into a more dangerous and inhospitable area of the conflict. (AE B) He too lauded Appellant's professionalism and contributions to mission accomplishment. (AE B)

Applicant provided five certificates of appreciation from units in Iraq praising him for his contributions to mission accomplishment. (AE C) They described his diligent, professional, and honorable service as a linguist. (AE C)

Iraq

The U.S. Mission in Iraq remains dedicated to building a strategic partnership with Iraq and the Iraqi people. The December 2011 departure of U.S. troops from Iraq marked a milestone in our relationship as Iraq continues to develop as a sovereign, stable, and self-reliant country. Iraq is now a key partner for the United States in the region as well as a voice of moderation and democracy in the Middle East. Iraq has functioning government institutions including an active legislature, is playing an increasingly constructive role in the region, and has a bright economic future as oil revenues surpass pre-Saddam production levels with continued rapid growth to come. The United States maintains vigorous and broad engagement with Iraq on diplomatic, political, economic, and security issues in accordance with the U.S.-Iraq Strategic Framework Agreement.

The Strategic Framework Agreement (SFA) between Iraq and the United States provides the basis for the U.S.-Iraq bilateral relationship. It covers the range of bilateral issues including political relations and diplomacy, defense and security, trade and finance, energy, judicial and law enforcement issues, services, science, culture, education, and environment. Efforts to implement the SFA are overseen by the Higher Coordinating Committee and several Joint Coordination Committees, which meet periodically.

The U.S. State Department warns that U.S. citizens in Iraq are at high risk for violence and kidnapping, and advises U.S. citizens not to travel to Iraq. The current travel advisory level is Level 4: Do not travel.

The ability of the U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is limited given the security environment. Anti-U.S. sectarian militias may threaten U.S. citizens and western companies throughout Iraq. Kidnappings and attacks by IEDs occur in many areas of the country, including Baghdad. Methods of attack have included explosively formed penetrators (EFPs), magnetic IEDs placed on vehicles, human and vehicle-borne IEDs, mines placed on or concealed near roads, mortars and rockets, and shootings using various direct fire weapons. Such attacks may take place in public venues such as cafes and markets.

Iraq witnessed continued terrorist activity in 2016, primarily as a result of the actions of ISIL. In 2016, ISIL remained the greatest terrorist threat globally, maintaining a formidable force in Syria, including a large number of foreign terrorist fighters. ISIL's capacity and territorial control in Iraq has dramatically eroded in the past two years. According to estimates from the UN Assistance Mission for Iraq, acts of terrorism and violence killed more than 7,000 civilians and injured more than 12,000 in 2016. By the end of 2017, Iraqi Security Forces had liberated all territory from ISIL, drastically reducing ISIL's ability to commit abuses and atrocities. Human rights violations continue to be a problem with allegations of unlawful killings and other abuses being made against the Iraqi Security Forces and Popular Mobilization Forces.

In its annual human rights report, the U.S. Department of State reported that severe human rights problems were widespread. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government's authority and worsened effective human rights protections. Iraqi Security Forces, members of the Federal Police, and the Peshmerga committed some human rights violations, and there continued to be reports of Popular Mobilization Forces killing, torturing, kidnapping, and extorting civilians. ISIL committed the overwhelming majority of serious human rights abuses, including attacks against: civilians, (particularly Shia but also Sunnis who opposed ISIL); members of other religious and ethnic minorities; women; and children.

Observers also reported other significant human rights-related problems: harsh and life-threatening conditions in detention and prison facilities; arbitrary arrest and lengthy pretrial detention, denial of fair public trial; insufficient judicial institutional capacity; ineffective implementation of civil judicial procedures and remedies; arbitrary interference with privacy and homes; child soldiers; limits on freedom of expression,

including press freedoms; violence against and harassment of journalists; undue censorship; social, religious, and political restrictions in academic and cultural matters; limits on freedoms of peaceful assembly and association; limits on religious freedom due to violence by extremist groups; restrictions on freedom of movement; refugee and internally displaced persons (IDP) abuse; both forced IDP returns and preventing IDPs from returning home; discrimination against and societal abuse of women and ethnic, religious, and racial minorities, including exclusion from decision-making roles; trafficking in persons; societal discrimination and violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; seizure of property without due process; and limitations on worker rights.

The United States' extraordinary commitment to Iraq is balanced against the inherent dangers of the ongoing conflict in Iraq to its citizens and residents and the Iraqi government's problems developing and complying with the rule of law. A top national security goal of the United States is to establish relationships, cooperation, training, and support of the Iraqi Government and military in the ongoing war against terrorism.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any

express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

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.

AG ¶ 7 has three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant admitted that his father and sister are citizens and residents of Kurdistan, a region of Iraq. One of his sisters is a citizen of Iraq residing in Germany.

Applicant does not have frequent or recent direct contact with his family living in Iraq. Applicant, his spouse, and three children were born in Kurdistan, a region of Iraq. Applicant maintains his relationships with his father and sister in Iraq through his sister living in Germany. He did not establish an absence of care and concern for relatives living in Iraq.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security [or trustworthiness] eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

There are widely documented safety issues for residents of Iraq primarily because of terrorists and insurgents. Applicant has voluntarily shared in those dangers on behalf of the DOD, and he is willing to do so in the future. Numerous linguists, supporting U.S. forces, have family living in Iraq. Hundreds of United States and coalition armed forces and civilian contractors serving in Iraq are targets of terrorists, along with Iraqi civilians and soldiers who support the Iraqi government and cooperate with coalition forces.

The mere possession of close family ties with relatives living in Iraq is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his or her spouse has such a relationship with even one person living in a foreign country, 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. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (discussing problematic visits of applicant's father to Iran).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, “the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge’s ultimate conclusions in the case. The country’s human rights record is another important consideration.” ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another significant consideration is the nature of a nation’s government’s relationship with the United States. These factors are relevant in assessing the likelihood that an applicant’s family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Iraq with the United States, and the situation in that country places a significant burden of persuasion on Applicant to demonstrate that his relationship with any family member living in or visiting that country does not pose a trustworthiness or security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a relative living in or visiting Iraq.⁶

Guideline B security concerns are not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

⁶ The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country have a security significance:

The issue under Guideline B is not whether an applicant’s immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant’s ties and contacts with immediate family members in a foreign country raise security [or trustworthiness] concerns because those ties and contacts create a potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant’s immediate family members -- has by virtue of a security clearance [or public trust position]. A person may be vulnerable to influence or pressure exerted on, or through, the person’s immediate family members -- regardless of whether the person’s family members are prominent or not.

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Iraq seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Iraq has a significant problem with terrorism. Applicant's family in Iraq "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with relatives who are living in Iraq or visiting that country create a potential conflict of interest because terrorists could place pressure on his family in Iraq in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with family in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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 United States;
- (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;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(b) and 8(c) apply. Applicant has "deep and longstanding relationships and loyalties in the U.S." Applicant has resided in the United States since 2006, except when he was in Iraq.⁷ Applicant, his spouse, and his three children are citizens and residents of the United States. He and his spouse swore an oath of allegiance to the United States as part of the citizenship process. He has property in the United States including a home and a substantial bank account. Most importantly, he served as a linguist in Iraq supporting U.S. goals in that country.

Applicant's support to the DOD in Iraq as a linguist and cultural advisor, including the dangers that service entailed, weigh towards mitigating security concerns. Applicant seeks a security clearance to enable him to continue serving in Iraq, providing critical assistance to U.S. Armed Forces in a dangerous combat environment. He has offered to continue to risk his life to support the United States' goals in Iraq. He has shown his

⁷ ISCR Case No. 17-00629 (App. Bd. May 24, 2018) the Appeal Board discussed a translator's multiple tours on behalf of the United States in Iraq, limited time as a resident in the United States, and connections to family living in Iraq. The Appeal Board stated:

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 [Directive] ¶ 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"); [Directive] ¶ 8(d) ("the foreign . . . activities are on U.S. Government business"); and [Directive] ¶ 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.")

Id. at 3 (internal footnotes omitted) (remanding administrative judge's denial of security clearance).

patriotism, loyalty, and fidelity to the United States during his support to DOD while serving in Iraq.

In ISCR Case No. 17-00629 at 4 (App. Bd. May 24, 2018), the Appeal Board cogently explained the relevance of such service on behalf of the United States:

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).

Applicant's connections to Iraq are limited as the only family members living in Kurdistan, a region of Iraq are his sister and father. He does not have direct contact with his family in Iraq. His travel to Iraq after 2012 was on behalf of the U.S. Government and not for personal reasons. He does not have property in Iraq.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Iraq. His father and sister reside in Kurdistan, a region of Iraq. Like every other resident of Iraq, they are at risk from criminals, terrorists, and human rights violations of the Iraqi government.

It is important to be mindful of the United States' huge historical investment of manpower and money in Iraq, and Applicant has supported U.S. goals and objectives in Iraq. Applicant and his family living in Iraq are potential targets of terrorists, and Applicant's potential access to classified information could theoretically add risk to his relatives living in that country from lawless elements in Iraq.

In sum, Applicant's connections to his relatives living in Iraq continue but are attenuated as they are through his sister living in Germany. His connections to the United States taken together, including his support of U.S. goals in a combat environment, are sufficient to overcome the foreign influence security concerns under Guideline B.

Foreign Preference

AG ¶ 9 articulates the security concern for foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's

judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 lists six foreign preference conditions that could raise a security concern and may be disqualifying in this case including:

- (a) applying for and/or acquiring citizenship in any other country;
- (b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;
- (c) failure to use a U.S. passport when entering or exiting the U.S.;
- (d) participation in foreign activities, including but not limited to:
 - (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and
 - (2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;
- (e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law; and
- (f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

In July 2012, Applicant was naturalized as a U.S. citizen. He erroneously stated that he voted in an Iraqi election in 2014.⁸ Applicant credibly stated that he did not vote in the Iraqi election. His statement to the OPM investigator and his response to the SOR about voting in the Iraqi election were caused by Applicant's misunderstanding of and

⁸ When the SOR was written, the previous version of the Adjudicative Guidelines (AG) (Aug. 30, 2006) was in effect, and AG ¶ 10(a)(7) stated, "(7) voting in a foreign election" was a disqualifying condition. The Department of Defense eliminated that disqualifying condition and did not replace it with a similar specific disqualifying security concern relating to voting. Currently, voting in a foreign election does not, in and of itself, raise a security concern. See *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 57-58 (2006) ("We refuse to interpret the Solomon Amendment in a way that negates its recent revision, and indeed would render it a largely meaningless exercise."); *Stone v. INS*, 514 U.S. 386, 397 (1995). Voting in an Iraqi election by itself does not necessarily "conflict[] with U.S. national security interests."

confusion about the English language. He did not intend to mislead security officials about his connections and preferences concerning Iraq.

In April 2014, Applicant assisted Iraqis citizens living in the United States for about three days who were interested in voting in an Iraqi election. It is unclear what entity funded this employment. It might have been funded by the Iraqi Government. Applicant's involvement in the Iraqi election while living in the United States shows enough of a preference or interest in Iraqi politics to raise a foreign preference security concern. See AG ¶ 10(d).

One foreign preference mitigating condition under AG ¶ 11 applies in this case, "(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests." Applicant stated that he is willing to or has renounced his Iraqi citizenship. Foreign preference security concerns are mitigated.

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 listed at AG ¶ 2(d):

- (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) the 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines B and C are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 56-year-old linguist, and DOD contractors have employed him since April 2015 in Iraq. Shortly after his hearing, he returned to Iraq to continue his linguist duties. His annual salary as a linguist is \$80,000. In 2006, he and his family moved to the United States. In 2012, he and his spouse became U.S. citizens, and they took the oath of allegiance to the United States. His employment and assets are located in the United States.

A Guideline B decision concerning Iraq must take into consideration the geopolitical situation and dangers there.⁹ Iraq is a dangerous place because of violence from terrorists, and the Iraqi government does not respect the full spectrum of human rights. Terrorists continue to threaten the Iraqi government, the interests of the United States, U.S. Armed Forces, and those who cooperate and assist the United States. The United States and Iraqi governments are allies in the war on terrorism.

Applicant has indirect contact through his sister in Germany with his father and sister in Iraq. Contacts with family in foreign countries are a manifestation of one's care and concern for relatives living in those foreign countries. His relationships with residents of Iraq raise important foreign influence security concerns. In 2014, he worked for three days to help Iraqi citizens vote in an Iraqi election, raising an important foreign preference security concern. The foreign preference security concern is mitigated by his offer to renounce his Iraqi citizenship and his oath of allegiance to the United States.

Applicant served as a linguist, translator, or cultural advisor in Iraq. He made contributions at personal risk on behalf of U.S. combat forces in Iraq. All these circumstances increase the probability that Applicant will recognize, resist, and report any attempts by a foreign power, terrorist group, or insurgent group to coerce or exploit him. See ISCR Case No. 07-00034 at 2 (App. Bd. Feb. 5, 2008). One colonel, one lieutenant colonel, and one major wrote letters lauding his professionalism, diligence, and honorable service to the United States in a combat zone. His base was bombed, and his patrol was fired upon three times. He received five certificates of appreciation from units in Iraq praising him for his contributions to mission accomplishment. His past honorable service as a linguist and intention to continue that service weighs heavily towards mitigation of foreign influence security concerns. See ISCR Case No. 07-00034 at 3 (App. Bd. Feb. 5, 2008) (affirming grant of security clearance and commenting "Applicant has served as a translator and as a cultural liaison between Americans and Afghan citizens, diffusing tensions and facilitating transactions between the two groups. . . . Applicant put his life in danger on at least one occasion to protect American lives and interests in Afghanistan.").

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence and foreign preference security concerns are mitigated. Eligibility for access to classified information is granted.

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
Subparagraphs 1.a through 1.c:	For Applicant

⁹ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

Paragraph 2, Guideline C:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

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

Mark Harvey
Administrative Judge