



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 17-03331
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Liam Apostol, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

05/17/2019

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On November 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, Foreign Influence. 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 adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On November 26, 2017, Applicant timely answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 10, 2019. The case was assigned to me on February 7, 2019. On February 13, 2019, a Notice of Hearing was issued, scheduling the hearing for April 2, 2019. The hearing was held as scheduled. During the hearing, the Government offered seven exhibits. Government Exhibits (GE) 1 - 7 were admitted without objection. Applicant offered 24 exhibits, which were admitted as Applicant Exhibits (AE) A – X, without objection. The Government requested administrative notice be taken of certain facts regarding the country of Iraq. The administrative notice document was marked as Administrative Notice Document I (Admin Not I). The record was held open until April

16, 2019, to allow Applicant to submit additional documents. Applicant timely submitted AE Y which was admitted without objection. The transcript was received on April 18, 2019. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

### **Administrative Notice - Iraq**

A coalition of countries led by U.S. and British forces invaded Iraq on March 20, 2003. Dictator Saddam Hussein was deposed and on May 12, 2003, the United States established the Coalition Provisional Authority as the interim civil authority in Iraq. About one year later, the Coalition Provisional Authority transferred sovereignty to the new Interim Iraqi Government led by Prime Minister Ayad Allawi. Throughout the governance of the Coalition Provisional Authority and the peaceful transfer of power, the role of Iraqi interpreters was vital to U.S. military success. Recognizing the role of local Iraqi interpreters – and the dangers they faced as a result of their assistance to the United States – Congress authorized a “Special Immigrant Visa” program that allowed local interpreters who served with distinction to immigrate to the United States. (Admin Not II)

Since 2005, the U.S. government has approved more than \$18.6 billion worth of foreign military sales to Iraq. U.S. security assistance supports the development of a modern, accountable, and professional Iraqi military capable of defending Iraq and its borders. U.S. security assistance programs also promote civilian oversight of the military, adherence to the rule of law, and the respect for human rights, while simultaneously increasing the Iraqi military’s capability to respond to threats and counter-terrorism operations. The U.S. Embassy Baghdad maintains the Office of Security Cooperation – Iraq to further these goals and to facilitate Iraq’s role as a responsible security partner, contributing to the peace and security of the region. (Admin Not II)

Iraq is a constitutional parliamentary republic. The outcome of the 2014 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power from former Prime Minister Nouri al-Maliki to Prime Minister Haider al-Abadi. (Admin Not 1)

The U.S. Department of State warns that travel within Iraq remains very dangerous and the ability of the U.S. Embassy to assist U.S. citizens is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. (Admin Not 1)

Severe human rights problems are widespread in Iraq. 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. Problems include harsh and life-threatening conditions in detention and prison facilities; arbitrary arrests and lengthy pretrial detention; limits on freedom of expression to include press, social, religious and political restrictions in academic and cultural matters; discrimination against and societal abuse of women and ethnic, religious, and racial

minorities; seizure of property without due process and limitations of worker rights. (Admin Not 1)

### **Findings of Fact**

Applicant is an 83-year-old linguist employed by a Department of Defense contractor since May 2016. He is currently stationed overseas. He is applying for a security clearance. He was born, raised, and educated in Iraq. He also attended college and received a bachelor's degree from a prestigious British University. He has several degrees from Iraqi universities. Applicant served in the Iraqi military attaining the rank of major general. (SOR ¶ 1.a) He retired in 1984. He is widowed. He and his wife had five children. Two of his sons have passed away. (Tr. 26, 31; Gov 1 – 3, 5) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

### **Foreign Influence**

Applicant served in the Iraqi Army from September 1955 to February 1984. He attended night school and received a law degree in 1976. After he retired, he practiced law for eight years. He also studied English and was awarded a Bachelor of Arts in English in 2004. When the U.S.-led coalition forces invaded Iraq in 2003, Applicant worked as a linguist and cultural advisor. He worked with British Forces for one year and then with the U.S. military in the Green Zone for four years. Because of the risky and dangerous work he was performing for the U.S. military and the risks to his family, Applicant was granted a Special Immigrant Visa and immigrated to the United States on September 21, 2007. He immigrated with his son M. and his family. (Tr. 19, 25, 31-35; Gov 1; AE D; AE E; Response to SOR)

In August 2008, Applicant worked as a DOD contractor in support of U.S. Marine Corps in Iraq as a linguist/advisor until October 2011, when the U.S. military withdrew from Iraq. He returned to the United States. He became a U.S. citizen on January 4, 2013. Since June 2016, he has worked as a linguist in Jordan. (Tr. 24, 36, 38-40; Gov 1; AE D; AE F; Response to SOR)

The SOR raises security concerns because Applicant has family members who are citizens of and reside in Iraq. Specifically, Applicant's two sons, daughter, son-in-law, two brothers, brother-in-law, and good friend are citizens of and reside in Iraq. Applicant provided information about his family members and contacts in Iraq during previous counter-intelligence screenings. (Gov 2, 3 and 5)

SOR ¶ 1.b: Applicant's son is a senior officer in the Iraqi Army and is a citizen and resident in Iraq. Applicant admits this allegation. His son is at a joint U.S. – Iraqi command in Baghdad. He speaks with his son every three or four months. (Tr. 26, 42-45; Response to SOR)

SOR ¶ 1.c: Applicant has a son who is a warrant officer in the Iraqi Army and is a citizen and resident in Iraq. He speaks with his son every three or four months. (Tr. 26-27, 45-47; Response to SOR)

SOR ¶ 1.d: Applicant's brother was a retired noncommissioned officer in the Iraqi Army. He passed away on August 15, 2017. (Tr. 27, 48; Response to SOR)

SOR ¶ 1.e: Applicant's brother-in-law served in the Iraqi Army and is a retired warrant officer. He is a citizen and resident of Iraq. Applicant's last contact with his brother-in-law was 2004. (Tr. 27, 48; Response to SOR)

SOR ¶¶ 1.f and 1.g: Applicant's daughter and son-in-law are citizens and residents of Iraq. They are retired math teachers. Applicant speaks with them every three or four months. (Tr. 27-28, 50-51; Response to SOR)

SOR ¶ 1.h: Applicant's brother is a retired survey engineer who is a citizen and resident of Iraq. Applicant speaks with his brother about once a year. He last saw him in 2014 in Iraq at his son's funeral. (Tr. 28, 51-53; Response to SOR)

SOR ¶ 1.i: Applicant has a friend who retired as a senior officer from the Iraqi Army. He is a citizen and resident of Iraq. Applicant's last contact with his friend was in September 2004. (Tr. 28-54-55; Response to SOR)

Applicant had a son who was a colonel in the Iraqi Army. In 2014, he was killed in action fighting ISIS in Iraq. (Tr. 36-37; AE D; Response to SOR) Applicant last traveled to Iraq in 2014 to attend his son's funeral. His company currently prohibits his travel to Iraq. He speaks with his children in Iraq by telephone. He calls them to discuss their general welfare. He does not discuss his job or security issues with his children. He is not dependent on them financially and they are not dependent on him financially. (Tr. 36-38, 40-53; Response to SOR)

When Applicant is not working overseas, he lives with his son M. and his family in the United States. His son and his wife have three children, two of who were born in the United States. His son and his family have adapted to life in the United States. They are all U.S. citizens. His son bought a home. Applicant co-signed the mortgage and helps his son with the mortgage payments. Applicant saved \$115,000 in a U.S. bank account. Once his contract as a linguist is complete, he intends to return to the United States and live with his son. Applicant has no bank accounts or financial investments in Iraq or any other overseas country. Applicant does not receive a pension from the Iraqi government for his military service. His military pension was terminated when he immigrated to the United States in 2007. He is registered to vote in the United States and has a United States passport. He surrendered his Iraqi passport to his facility security officer. (Tr. 23, 33-34, 36-40, 40, 56-59; AE O – AE Q; AE X)

### **Whole-person Factors**

Applicant provided numerous letters attesting to his character, dedication, and abilities as a linguist. A U.S. Army captain who worked with Applicant in 2003, described Applicant as “. . . the most reliable and sought after interpreter we have in camp.” (AE A at 3) Colonel G.F., U.S. Marine Corps, worked with Applicant in Iraq in the summer of 2004. Colonel G.F. states he has worked with interpreters around the world and of the many dozens he has observed, Applicant is the best. Applicant also had a

deep knowledge of the Iraqi government, military affairs, and the administrative process. He also taught him about Iraqi culture. (AE A at 4)

J.P., Major General, U.S. Army, recommended Applicant for special immigrant status in September 2006. He notes Applicant served as a translator in support of U.S. Army from June 2004 to 2006. He states Applicant is a trusted and valuable contributor to the Coalition efforts in Iraq. (AE A at 11)

In October 2006, J.P., Lieutenant Colonel, U.S. Army nominated Applicant for an award for his exceptional translator/interpreter skills and his willingness to go above and beyond the call of his normal duties. Applicant's reputation is well known because he always volunteers for the difficult tasks and provides the highest quality translations. (AE A at 13)

In June 2009, Lieutenant Colonel M., USMC, wrote a letter of recommendation for Applicant, noting that he worked with Applicant during pre-deployment training in support of Iraqi Freedom. Lieutenant Colonel M. notes Applicant "has consistently displayed courage, dedication, and a patriotic sense of duty." His support for Coalition Forces and Iraqi Security Forces was instrumental in developing Joint Coordination Centers through Al Anbar Province and had a positive impact in the overall security and stability of the province. (AE A at 19)

In July 2010, Lieutenant Colonel T. states "In 24 years of service as a U.S. Army officer, I have never witnessed such dedication and loyalty as exemplified by [Applicant]. He is always at the forefront of his colleagues in work ethic, cultural expertise and language competency, and because of these professional attributes I without hesitation give him my highest recommendation for both employment and continued service as a valued friend and strategic asset to the mission." (AE A at 20)

Applicant's current supervisor describes him as "a tireless worker, always going the extra mile with our Army customer, whom he has impressed over and over. He has excellent communication skills, consistently handling complex situations; advising U.S. Army personnel of best practices regarding our Jordanian military partners; working with the customer to provide unsurpassed mission support. . . ." (AE L at 1)

Numerous reference letters say similar favorable things about Applicant. (AE A; AE L) He also received several certificates of appreciation and other awards. (AE B) His performance evaluations are highly favorable. He received several bonus payments for his performance in 2018 and 2019. (AE A; AE J) In October 2018, Applicant completed a 28-mile March for the Fallen alongside the U.S. troops he supports. His achievement was the focus of an article in the base newspaper and Applicant received an award from the command. (Tr. 20-23; AE K; AE Y)

Applicant testified he enjoys being able to facilitate communications between the American and Iraqi communities. He enjoys working with the military because of his military background. His allegiance is to the United States. He will do his best to keep the U.S. interests safe and will follow the rules of law. (Tr. 58; Response to SOR)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 for national security eligibility will be resolved in favor of the 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.

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 that 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 (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B: Foreign Influence

AG ¶ 6 explains the Government's concern under Foreign Influence:

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 lists conditions that could raise a security concern and may be disqualifying. The following are applicable to Applicant's 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; and

(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.

In Applicant's case, AG ¶ 7(a) and AG ¶ 7(b) apply. 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). Applicant has several family members who are citizens and reside in Iraq to include two sons, one daughter, a brother-in-law, and a son-in-law. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Iraq's serious human rights problems, and its issues with terrorism. The government of Iraq has made some progress, but a heightened risk remains. Applicant's family in Iraq also create a potential conflict of interest between his obligation to protect classified information and his desire to help his family members by providing that information. The risk is heightened further because two of Applicant's sons are members of the Iraqi Army, one of whom is a senior officer.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b). The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. The following mitigating condition applies:

(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.

While Applicant's family members who are citizens of and reside in Iraq raise security concerns, those concerns are mitigated because of Applicant's lengthy and distinguished service as a linguist supporting the U.S. military in Iraq and Jordan. At great risk to himself, Applicant worked for the British and U.S. Government in Iraq from 2003 to 2007 while he was an Iraqi citizen. His efforts resulted in the U.S. Government granting Applicant a Special Immigrant Visa (SIV). Applicant immigrated to the United States in 2007. He settled in the United States with his son's family, but accepted another linguist job supporting U.S. Marines in Iraq from August 2008 to 2011. He became a U.S. citizen in January 2014. In 2016, Applicant accepted a linguist position for the U.S. military in Jordan. In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue 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 the purposes of refuting, mitigating, or extenuating the security concerns raised by that 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 national 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.

I considered Applicant's longstanding commitment to the United States as well as his favorable contributions to national security. He worked under dangerous conditions as a linguist for the U.S. Government. Numerous British and U.S. military members attest to his dedication and work ethic. His efforts resulted in him being granted a SIV.



He immigrated to the United States and became a U.S. citizen. Applicant is proud of his U.S. citizenship. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable. The security concerns under Foreign Influence 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 relevant 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), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's devotion to the U.S. government's mission in Iraq and Jordan. I considered the numerous letters of support from British and U.S. military colleagues with whom Applicant worked as a linguist. I considered his support of the U.S. government overseas both before and after becoming a U.S. citizen. Applicant is devoted to his new country the U.S. and intends to permanently reside with his son and his family who reside in the U.S.

Foreign Influence concerns were raised because of Applicant's service in the Iraqi military, his family members who are citizens and reside in Iraq as well as his sons' service in the Iraqi military. Applicant lost a son who was killed in action fighting ISIS in 2014. He has suffered a great loss, but remains dedicated to the U.S. mission overseas. Applicant mitigated these concerns based on his dedication and outstanding service as a linguist to the U.S. military mission in Iraq and Jordan since 2003.

### **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 -1.i:	For Applicant

## **Conclusion**

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

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ERIN C. HOGAN  
Administrative Judge