



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 17-03726 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

01/02/2019

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 8, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on February 1, 2018, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 18, 2018, and reassigned to me on October 16, 2018. The hearing was convened as scheduled on October 31, 2018.

**Evidence**

Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through L, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain facts about Iraq. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Iraq.

### **Findings of Fact**

Applicant is a 43-year-old potential employee of a defense contractor. He will be hired if he receives a security clearance. He has a General Educational Development (GED) high school equivalency diploma, which he received in 2017. He is married for the second time. He and his wife have two young children.<sup>1</sup>

Applicant was born in Iraq to Iraqi parents. He attended high school in Iraq. His brother worked for a humanitarian organization that was affiliated with the United States. Because of his work with the organization, his brother was eligible to immigrate with his family to the United States. Applicant, his mother, and his three siblings immigrated to the United States in 1997. Applicant's father, who was apparently divorced from Applicant's mother and remarried, remained in Iraq. Applicant became a U.S. citizen in 2009. His mother and siblings live in the United States as U.S. citizens or permanent residents.<sup>2</sup>

Applicant worked under dangerous conditions as a linguist with the U.S. military in Iraq from 2005 to 2011, at which time he returned to the United States. His wife is an Iraqi citizen. He went to Iraq later in 2011 and married his wife. His two children were born in Iraq. His application for his wife to immigrate to the United States was approved. Applicant, his wife, and their two children moved to the United States in 2016. His children are U.S. citizens, and his wife is a U.S. permanent resident who plans to apply for U.S. citizenship as soon as she is eligible.<sup>3</sup>

Applicant's father-in-law is deceased. His wife's mother and siblings are citizens and residents of Iraq. His mother-in-law has never worked outside the home. Neither Applicant nor his wife have returned to Iraq since 2016. He sent his mother-in-law about \$1,000 in 2016 for a medical procedure, but he has not provided any additional financial support to his in-laws. He does not have regular contact with his in-laws in Iraq. To his knowledge, none of his in-laws have any direct connection to the Iraqi government or any terrorist organization.<sup>4</sup>

Applicant owns a house in the United States. He has no foreign assets. His children are in school, and he would like to further his own education. His wife started

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<sup>1</sup> Tr. at 20, 25, 31-34; GE 1; AE B, C, I.

<sup>2</sup> Tr. at 16-17, 30; GE 1; AE B, H.

<sup>3</sup> Tr. at 18-33; GE 1; AE B-D.

<sup>4</sup> Tr. at 27, 39-43; Applicant's response to SOR; GE 1.

working a few weeks before his hearing. He credibly testified that his wife and her family in Iraq could not be used to coerce or intimidate him into revealing classified information.<sup>5</sup>

Applicant submitted documents and letters from members of the U.S. military attesting to his outstanding service as a linguist. He is praised for his dedication, professionalism, honesty, reliability, work ethic, loyalty to the United States, courage, and integrity. A senior U.S. military officer wrote in 2009 that Applicant had been a fearless partner in their sometimes dangerous missions, and the officer trusted Applicant completely.<sup>6</sup>

## Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be used 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, administrative judges apply the guidelines 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(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 national security eligibility will be resolved in favor of the national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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<sup>5</sup> Tr. at 26-28, 35-38, 46-47; AE B, K.

<sup>6</sup> AE A, D, E.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for foreign influence is set out in AG ¶ 6:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable 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's wife is an Iraqi citizen, and his mother-in-law is a citizen and resident of Iraq. The potential for terrorist violence against U.S. interests and citizens remains high in Iraq, and it continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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; and

(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.

I considered the totality of Applicant's ties to Iraq. Guideline B is 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.<sup>7</sup>

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to

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<sup>7</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He credibly testified that his wife's family in Iraq could not be used to coerce or intimidate him into revealing classified information. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security.<sup>8</sup> 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.

Applicant worked under dangerous conditions as a linguist with the U.S. military in Iraq from 2005 to 2011. He was heavily praised by senior members of the U.S. military. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(a) is applicable to his wife who is a U.S. permanent resident waiting to apply for U.S. citizenship. AG ¶ 8(b) is applicable to all of Applicant's foreign relatives.

### **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):

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<sup>8</sup> ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

(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 have incorporated my comments under Guideline B in my whole-person analysis.

Applicant's work with the U.S. military in Iraq earned him high praise from senior U.S. military personnel. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."<sup>9</sup> The complicated state of affairs in Iraq places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

### **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:

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|---------------------------|---------------|
| Paragraph 1, Guideline B: | For Applicant |
| Subparagraphs 1.a-1.b:    | For Applicant |

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge

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<sup>9</sup> ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).