



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



In the matter of:)
)
) ISCR Case No. 17-03848
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

08/28/2019

Decision

CERVI, Gregg A., Administrative Judge:

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

Statement of the Case

On August 16, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline F (Financial Considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on August 31, 2018, and requested a hearing before an administrative judge. The case was assigned to me on November 14, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 13, 2018, scheduling the hearing for January 24, 2019.

I convened the hearing as scheduled. The Government's exhibit list and table of financial allegations, as well as a Request for Administrative Notice for the Federal Republic of Iraq, were appended to the record as Hearing Exhibits (HE) I, II, and III, respectively. I admitted Government Exhibits (GE) 1 through 5 in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AE) A through G, which I admitted in evidence without objection. The record was held open pending additional documents to be submitted by Applicant by February 25, 2019. Those additional documents were submitted within the appropriate time, marked as a group, as AE H, and admitted without objection. DOHA received the hearing transcript (Tr.) on February 5, 2019.

Procedural Ruling

Request for Administrative Notice

Department Counsel's request that I take administrative notice of certain facts about the Federal Republic of Iraq was included in the record as HE III. Applicant did not object. I have taken administrative notice of the facts contained in HE III, summarized below.

The U.S. Director of National Intelligence stated in 2018, that Iraq is likely to face a lengthy period of political turmoil and conflict as it struggles to rebuild, reconstitute the Iraqi state, maintain pressure on ISIS, and rein in the Iranian-backed Shia militias that pose an enduring threat to U.S. personnel. ISIS will remain a terrorist and insurgent threat, and the group will seek to exploit Sunni discontent to conduct attacks and try to regain Iraqi territory.

The U.S. State Department stated in its 2017 annual human rights report, that violence continued throughout Iraq, largely fueled by the actions of ISIS. The most significant human rights issues included allegations of unlawful killings by some members of the Iraqi Security Forces; disappearance and extortion by elements of the Popular Mobilization Forces; torture; harsh and life-threatening conditions in detention and prison facilities; arbitrary arrest and detention; arbitrary interference with privacy; criminalization of libel and other limits on freedom of expression; violence against journalists; widespread official corruption; greatly reduced penalties for so-called "honor killings"; coerced or forced abortions imposed by ISIS on its victims; legal restrictions on freedom of movement of women; and trafficking in persons.

Foreigners, Iraqi citizens, and especially dual U.S.-Iraqi citizens are targets of kidnapping for money and political/religious reasons. Many hostages have been killed. In 2017, the U.S. Secretary of State said that ISIS is responsible for genocide against Yazidis, Christians, and Shia Muslims in areas it controls or has controlled. ISIS is also responsible for crimes against humanity and ethnic cleansing directed at these same groups, and in some cases against Sunni Muslims, Kurds, and other minorities.

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 ability of the

U.S. Embassy to provide consular services to U.S. citizens outside Baghdad is extremely limited given the security environment. The Islamic State of Iraq and Syria (ISIS) controls a significant portion of Iraq's territory and is conducting a widespread, active insurgency in many parts of Iraq and Syria. The U.S. Government considers the potential personal security threats to U.S. Government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines. Anti-American and anti-Western sentiment exists throughout Iraq.

Findings of Fact

The SOR alleges Applicant's father, mother, two sisters and a brother are residents and citizens of Iraq. It also alleges 11 delinquent debts, totaling \$21,100. Applicant admitted the SOR allegations with comments, except he denied SOR ¶¶ 1.c and 1.f.

Applicant is 40 years old. He was born in Iraq. He is not married and has no children. He immigrated to the United States in 2009 with a special immigrant visa, and naturalized as a U.S. citizen in 2015. He was granted a U.S. passport and his Iraq passport was relinquished. He does not own property or any assets in Iraq, and votes in U.S. elections. Applicant has family who are residents and citizens of Iraq, including his father, mother, and two sisters, who live together. His brother lives in France with his spouse.

Applicant graduated from high school in 1994 and attended some college in Iraq. He served his required military service in the Iraqi Republican Guard from 1999 to 2002 as an enlisted military engineer. Applicant dreamed to be a U.S. citizen, and believes in the cause of freedom, humanitarian relief, and elimination of terrorism in Iraq. He hopes to teach the U.S. military about the culture, language, and behavior of Iraqi people. Applicant is currently employed as a media analyst, and is sponsored for a security clearance by a government contractor who intends to hire him as a linguist. He was unemployed from November 2016 to at least March 2017.

Applicant voluntarily assisted U.S. coalition forces in 2003. He worked officially with the U.S. military as a local-hire linguist/translator from 2003 to 2009. During that time, he was employed by five different U.S. contractors. As religious minorities, he and his family were threatened by the terrorist group Al-Qaeda in about 2004. Threats included leaflets in his neighborhood, a judgment against him for beheading, and a bullet shot through his car window, without him in it. However, he stated that he has never been physically harmed, but he stayed away from his home for extended periods so as not to draw attention to his family. His brother moved to France because the terrorist group's activities in Iraq were interfering with his sales business. The threats stopped in 2007 or 2008. Applicant has not returned to Iraq since 2009.

Applicant's father, 75 years old, is retired from employment with an oil company. His mother, 68 years old, is a homemaker. One sister is unemployed, and the other works for an oil company in Iraq. Applicant maintains regular contact by text and email with his sisters, who relay information to his parents because they are not familiar with technology. He does not call home because it is too expensive.

Applicant fell behind on financial obligations beginning in about 2011, due to a failed relationship and exacerbated by periods of unemployment. He obtained his credit report and undertook an effort to resolve his debts. SOR ¶¶ 1.a, 1.c, 1.d and 1.g were small debts that Applicant disputed or settled, and were removed from his credit report. SOR ¶¶ 1.b, 1.e, 1.f, 1.j, 1.k, 1.i, and 1.h have been settled and paid. SOR 1.d is a small medical account that no longer is listed in his credit report. Applicant provided an additional paid receipt for an account that was not listed in the SOR. His current credit report from all three credit reporting services shows no collection accounts. Applicant submitted documents showing the resolution of his debts. In addition, Applicant pursued credit counseling with a non-profit service, and completed a household budget. His budget shows a positive net cash flow and the beginning of a savings program for emergencies. He has not incurred new debts since 2014, does not have a credit card, and pays all financial obligations when due.

Applicant provided numerous letters of support from U.S. military officials with whom he has worked, and certificates of appreciation for his work as a linguist.

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 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(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 to classified information will be resolved in favor of 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.

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 Exec. Or. 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* Exec. Or. 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.

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, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant’s mother, father and two sisters are citizens and residents of Iraq. Applicant maintains text and email communications with his sisters, and through them, with his parents. AG ¶ 7(a) applies.

AG ¶ 8 provides conditions that could mitigate security concerns. 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.

Applicant was born and educated in Iraq, and served his mandatory service in the Iraqi Army during an enlistment as an engineer from 1999 to 2002. From 2003 to 2009, Applicant worked as a linguist for U.S. and coalition forces in Iraq. He moved to the United States in 2009 using a special immigrant visa because of his work on behalf of U.S. forces in Iraq, and became a U.S. citizen in 2015. He votes in the United States. Applicant has not returned to Iraq since 2009.

Applicant’s father and mother are retired and they did not have ties to the Iraqi government. One sister works for an oil company, and the other stays home with her parents. Applicant’s brother and his spouse live in France. Applicant has no financial ties to Iraq, does not own property, and does not participate in elections. His family members are not directly tied to the Iraqi government, nor are they sympathetic to insurgent groups. Although Applicant maintains text or email communications with his family, he does not make phone calls, and has not returned to Iraq since 2009. Applicant expressed his deep loyalty and appreciation for the United States and supports the U.S. and coalition forces goals in Iraq. He has lived and worked in the United States since 2009, has a U.S. bank account, votes in U.S. elections, and helps other immigrants with advise on how to stay within the U.S. laws. He expressed a kinship with U.S. troops that fought in Iraq and wants to train U.S. forces in cultural and language skills.

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.” ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). Applicant is strongly supported by the U.S. military officials with whom he worked as a linguist in Iraq. AG ¶¶ 8(a) and (b) apply.

Guideline F: Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred several delinquent debts beginning in about 2011 due to a failed relationship and periods of unemployment. The record evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20, and I considered all of them. The following are potentially applicable:

- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant resolved his debts through diligent work and tenacious efforts. His credit report shows no collection accounts, and he has taken steps to obtain counseling, not use credit cards, and build a financial budget and savings. I believe Applicant has overcome his financial problems and additional delinquencies are unlikely to recur. AG ¶¶ 20(b), (c), and (d) apply.

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 have incorporated my comments under Guidelines B and F in my whole-person analysis. After weighing the disqualifying and mitigating conditions under this guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence and financial considerations security concerns. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

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 F:	FOR APPLICANT
Subparagraph 1.a – 1.k:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT

Subparagraphs 2.a – 2.d:

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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Gregg A. Cervi
Administrative Judge