



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



In the matter of: )  
 )  
----- ) ISCR Case No. 17-04065  
 )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Andrew Henderson, Esq., Department Counsel

For Applicant:  
Ryan C. Nerney, Esq.  
The Edmunds Law Firm

May 29, 2019

**Decision**

ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by the presence of his family members in Iraq. His request for national security eligibility and a security clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 20, 2017. (Government Exhibit 1.) On December 15, 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on or after June 8, 2017.

Applicant answered the SOR on December 30, 2017, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on March 26, 2018. The case was assigned to me on March 28, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 5, 2018, scheduling the hearing for May 22, 2018. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 3, which were admitted without objection. The Government also submitted Government Exhibit 4 for Administrative Notice. Applicant testified on his own behalf and submitted Applicant Exhibits A through I, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 7, 2018.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to the Republic of Iraq (Iraq). Department Counsel provided an eight-page summary of the facts, supported by eight Government documents pertaining to Iraq, identified as Government Exhibit 4. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact. (Tr. 11.)

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 35 years old, divorced, and has three children. He is applying for national security eligibility and a security clearance in connection with his employment with a defense contractor as a linguist.

#### **Paragraph 1 – Guideline B (Foreign Influence)**

Applicant was born in Iraq in 1982. Beginning in 2006, after the invasion of Iraq, Applicant worked with the Multi-National Force in Iraq as a linguist. He worked with various American units in Iraq until 2010. During that time he experienced combat. (Applicant Exhibits B, C, and D; Tr. 17-18, 20, 39-40.)

Applicant immigrated to the United States under a Special Immigrant Visa (SIV) in 2010. He was granted this status under a program that allowed a small number of translators, who had worked with the U.S. military in Iraq, and met certain requirements, to immigrate to the United States. Two requirements of the program are, "The individual has provided faithful and valuable service to the United States Government," and "The individual . . . has experienced or is experiencing an ongoing serious threat as a consequence of the employment by or on behalf of the United States Government." Applicant received a credible threat in 2008, which was documented by an American Army unit commander. (Applicant Exhibits B and F; Tr. 19-20, 41.)<sup>1</sup>

After immigrating to the United States in 2010, Applicant worked in private industry outside the defense field. He also attended college. He started working for a defense contractor in 2017, and is currently stationed in Jordan as a linguist. (Government Exhibit 1 at Section 13A; Applicant Exhibits A and C; Tr. 20-21, 24, 35.)

Applicant became a naturalized American citizen on October 23, 2015. Applicant renounced his Iraqi citizenship when he became an American citizen. He has no Iraqi identification of any type. Applicant has no financial contacts with Iraq. His savings are in the United States. (Applicant Exhibits G and H; Tr. 33-35.)

Applicant married his wife in 2006, and they were divorced in 2017. They had one child in Iraq, and the other two children were born in the United States. Applicant's wife and children continue to reside in the United States. As far as Applicant knows, his wife has no plans to move back to Iraq. Applicant would not allow his children to leave the United States. (Government Exhibit 1 at Sections 8 and 17; Tr. 24-26, 44-47.)

Applicant has had no contact with his ex-wife's family since their divorce two years ago. During their marriage Applicant's contact with his in-laws was minimal. (Tr. 23-26.)

Applicant's father is deceased. His mother now lives in the United States, as does his younger brother. He has two older brothers. None of his relatives have knowledge of Applicant's job, or the fact that he is applying for a security clearance. (Government Exhibit 1 at Section 18; Tr. 31-33.)

As stated, Applicant has two older brothers that continue to reside in Iraq. He has recently had contact with them once or twice a year. Neither of his brothers have any relation to the Iraqi government. (Government Exhibit 3; Tr. 21-23, 41-42.)

Applicant has two uncles, one from each side of his family, who continue to reside in Iraq. One of these uncles is a retired senior officer in the Iraqi military. Applicant last had contact with this uncle 10 to 15 years ago, before he began work as a linguist. The other uncle was at one time an advisor to the Iraqi government. Once again, Applicant's last contact with this person was 10 to 15 years ago. Applicant is not

---

<sup>1</sup> See Department of State, *Special Immigrant Visas (SIVs) for Iraqi and Afghan Translators/Interpreters*, <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html> (accessed May 21, 2019).

sure of their current positions, since he has had no relationship with either of them for many years. (Tr. 27-31, 43-44.)

Applicant filled out a counterintelligence-focused security screening questionnaire in 2017. (Government Exhibit 2.) He was also interviewed by an investigator from the Office of Personnel Management in 2017. (Government Exhibit 3.) The information provided by Applicant during these occasions was consistent with his testimony during the hearing.

## **Mitigation**

Applicant is proud to be an American citizen, and to have assisted the U.S. military in Iraq. He feels no sense of loyalty to Iraq, stating, "All I know now is my loyalty to the United States." (Applicant Exhibit I; Tr. 36-38.)

Applicant is a highly respected and successful linguist. This is shown by letters of appreciation and certificates of achievement presented to him with regard to his work in Iraq in the period from 2006 through 2010. Applicant's work during that time is described by one officer as participation in "neighborhood clearances, as well as countless combat patrols in a variety of densely populated neighborhoods in Baghdad." The officer goes to state that Applicant was "always prepared to perform his duties despite enemy contact on several occasions." (Applicant Exhibits B and C.)

Applicant continued to do outstanding work in his current assignment in Jordan. This is attested to by the letter of recommendation from the commander of the unit he supported. (Applicant Exhibit A.)

Applicant is very aware of his responsibilities if he obtains a security clearance, particularly if advances are made toward him or his relatives. (Tr. 25-26.)

## **Iraq**

I take administrative notice of the following facts: In 2003, The United States led a coalition to remove Saddam Hussein from power in Iraq. After free elections, Iraq's new government took office. Despite the elections and new government, Iraq remains engulfed in violence, perpetrated by Al Qaeda terrorists and other insurgents. Numerous attacks and kidnappings have targeted the U.S. Armed Forces, contractors, and other civilians, as well as Iraqis. Even with aggressive governmental action against terrorists, the threat of terrorism in Iraq remains high. Terrorist groups conduct intelligence activities as effectively as state intelligence services. (Government Exhibit 6: Attachments.)

## **Policies**

When evaluating an applicant's suitability for national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines

(AG). 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 AG ¶ 2 describing 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 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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

Section 7 of 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

### Paragraph 1 - Guideline B (Foreign Influence)

The security concern relating to the guideline 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. Two 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; 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.

Applicant has two brothers and two uncles who live in Iraq. Several family members of his ex-wife also reside in Iraq. The evidence is sufficient to raise these disqualifying conditions.

Iraq has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).<sup>2</sup>

---

<sup>2</sup> The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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.

Applicant has minimal contact with his family members who live in Iraq. In addition, he has no contact with the family members of his ex-wife who reside in Iraq. He is a proud American citizen, and he feels he has succeeded in this country on his own, without help from anyone. AG ¶¶ 8(a), (b), and (c) apply.

Applicant is knowledgeable about his security responsibilities, and evinced a credible intent to rebuff any attempts by foreign actors to influence him. AG ¶ 8(e) applies.

Applicant served in Iraq without any indication that he had breached security policies or procedures. There is considerable evidence that he acted courageously in a particularly difficult and dangerous job. While that fact is not normally a factor in granting a clearance, the Appeal Board stated in ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006) the following:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures significant probative value for purposes of refuting, mitigating or extenuating security concerns raised by the applicant's more immediate disqualifying conduct or circumstances. See *e.g.* ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 (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 impact 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 have carefully considered the fact that Applicant's two uncles held senior positions with various governmental entities in Iraq several years ago. In this particular case, I find that Applicant has mitigated the security significance arising from their presence for the following reasons. Applicant has been subject to considerable screening for his various jobs, as well as his entry into the United States under the SIV program. He consistently has identified his uncles and their jobs. He was admitted to the United States under the SIV program, which had strict rules. The mitigating evidence makes clear that Applicant behaved courageously while helping the coalition forces in Iraq in a substantial way. Applicant has completely mitigated the security significance of the presence of his relations in Iraq. Paragraph 1 is found for Applicant.

### **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(b), 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but warrant additional comment.

Applicant was born and raised in Iraq. From 2006 through 2010 he worked successfully for coalition forces in Iraq under frequently dangerous conditions. He has successfully worked as a linguist supporting American forces and interests in Jordan since 2017. Based on his work, Applicant received a Special Immigrant Visa. Applicant has shown himself to be a talented and patriotic American citizen and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty to the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, 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:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.e: 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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Wilford H. Ross  
Administrative Judge