



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



In the matter of: )  
)  
) ISCR Case No. 17-04099  
)  
Applicant for Security Clearance )

**Appearances**

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

05/14/2019

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On December 17, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on January 21, 2019, and requested a hearing before an administrative judge. The case was assigned to me on March 26, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2019. I convened the hearing as scheduled on April 17, 2019. The Government offered exhibits

(GE) 1 through 3. Applicant testified and offered Applicant Exhibits (AE) A through L. There were no objections to any of the exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on April 30, 2019.

### **Request for Administrative Notice**

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about Iraq. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.<sup>1</sup> The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

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

Applicant is 38 years old. He never married and has no children. He was born in Iraq. He did not serve in the Iraqi military. He was granted a Special Immigrant Visa (SIV) in 2010 and immigrated to the United States that same year. He became a naturalized citizen of the United States in 2016. He earned an associate's degree and also became a certified technician in a medical specialty in 2016. He worked in that field from May 2016 to May 2017, when he began training for his current job. Applicant has worked for his current employer, a federal contractor, as a linguist in Iraq since June 2017.<sup>2</sup>

Applicant worked for U.S. contractors in Iraq at forward operating military bases from 2004 to 2010. He lived on base and due to the dangerousness of the missions he was assigned, he rarely went home. He testified that on a daily basis he was involved in all types of operations and missions, including combat operations. He was also involved in the arrest of terrorists. He estimated that from 2004 to 2010, he participated in 800 to 1,000 missions "outside the wire," meaning off-base and was subjected to combat situations with U.S. military forces. He testified that his unit was attacked on numerous occasions. One of the times, he was in a Humvee when it hit an improvised explosive device. He also participated in missions where there were casualties.<sup>3</sup>

After being granted an SIV for his service and immigrating to the United States, Applicant worked from approximately 2011 to 2016 as a security officer and also worked a second job as a translator.<sup>4</sup>

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<sup>1</sup> Source documents are attached to Hearing Exhibit I.

<sup>2</sup> Tr. 18-26; AE F, G, J.

<sup>3</sup> Tr. 26-29.

<sup>4</sup> Tr. 24-25.

Applicant provided documents to show he renounced his Iraqi citizenship and relinquished his expired Iraqi passport.<sup>5</sup> He provided a character letter from a military officer who is an officer-in-charge and with whom he has worked with in Iraq over the past two years. The officer stated that in the time they have worked together, which was daily over the past three months, Applicant has worked on escort missions that required a level of discretion. Applicant is described as respectful of privacy, protects information, and adheres to rules and restrictions. He has an outstanding work ethic and is considered an outstanding citizen. He is punctual and does exactly what he is told to do and promptly completes the assignment. The officer has great trust and faith in Applicant and his loyalty and integrity is beyond reproach.<sup>6</sup>

Applicant also provided character letters from those whom he served with before immigrating to the United States. They say he served honorably and enabled United States forces to successfully accomplish its missions. He was an integral member of a platoon, allowing it to successfully engage the local populace and members of the Iraqi government. He earned the trust of the Iraqi Army and was a vital link for joint American-Iraqi cooperation. On multiple occasions, his quick actions and understanding of both Iraqi and American cultures assisted in allowing U.S. forces to gain the respect of the local populace. He was described as trustworthy and reliable.<sup>7</sup>

Another character letter from a military officer that Applicant served with in Iraq stated that he was dedicated to his duty and a true professional while working with forces in hazardous environments. He aided platoons successfully in their daily combat missions. He was considered honest and hard working.

Applicant has no financial interests in Iraq. He and his brother own a house in the United States, which they purchased in 2017. They both pay the mortgage on the house, and when Applicant is in the United States, he lives with his brother and his brother's family. He also owns two older model vehicles and a third he owns with his brother. Applicant contributes to an Individual Retirement Account. In 2018, he earned approximately \$73,000 in income. He has approximately \$90,000 in a savings account in the United States. He intends to retire in the United States.<sup>8</sup>

Applicant has three brothers. His brother with whom he purchased a house with, immigrated to the United States in 2011 on an SIV, which he obtained because of his service to the United States. He is a security officer. His brother and his wife are permanent residents of the United States and his brother has applied to be a naturalized citizen. He has his interview scheduled in the coming weeks. They have four children.<sup>9</sup>

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<sup>5</sup> AE A.

<sup>6</sup> AE B.

<sup>7</sup> AE D.

<sup>8</sup> Tr. 59; AE E, H.

<sup>9</sup> Tr. 20-21, 68-71.

One brother joined the Iraqi Army in the 1990s. He is a citizen and resident of Iraq. Applicant stated that after the Iraqi invasion of Kuwait, the Iraqi security forces were dissolved, so his brother was not a part of the army at that time. His brother worked for the United States military before returning to the Iraqi Army in approximately 2006 or 2007. Applicant does not know what his brother's military occupation is, but believes it is administrative. He holds the rank of major. The last time Applicant saw this brother was in January 2010. His brother is married with two children. Applicant speaks to him about once or twice a year. He last spoke with this brother about three months ago.<sup>10</sup>

Another brother of Applicant's worked as a carpenter for the United States forces from 2004 to 2007. He travels to the country of Georgia where he works as a property manager of real estate. He also worked in Iraq for the Ministry of Oil and Minerals. He has been on leave from this position for the past four years because the factory is closed. He receives partial pay while it is closed. Applicant has only visited this brother once in person since 2010. He visited him in Georgia in 2018, because Applicant's visa expired, and Applicant had to leave Iraq. He stayed in Georgia with his brother until his visa was renewed. He has quarterly telephonic contact. He provided this brother some money in approximately 2014 or 2015, when his brother was in Georgia.<sup>11</sup>

Applicant has six sisters who are citizens and residents of Iraq. Their information is as follows:

Sister #1 was born in 1962 and is married with four children. Applicant's last contact with her was by phone in 2014. Her husband's occupation is unknown.<sup>12</sup>

Sister #2 was born in 1964 and is married with children. Applicant does not know how many children. He believes her husband works in construction. His last contact with her was in 2009.<sup>13</sup>

Sister #3 was born in 1966. She is a widow with four children. She is also a teacher Applicant has not spoken to her since 2015.<sup>14</sup>

Sister #4 was born in 1968 and is single. She is a teacher and lives in Iraq with their two brothers and a sister in the same house. Applicant has not seen her since 2010. He last spoke with her about eight months ago by phone. He does not provide her or any

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<sup>10</sup> Tr. 29-33, 42-44.

<sup>11</sup> Tr. 34-46; GE 3; AE L.

<sup>12</sup> Tr. 49-50; GE 3.

<sup>13</sup> Tr. 50-51; GE 3.

<sup>14</sup> Tr. 55-56; GE 3.

other siblings financial support, except as noted to above to his one brother. The four siblings in Iraq have applied for immigration visas to the United States.<sup>15</sup>

Sister #5 was born in 1972 and is a teacher. Applicant spoke her with about ten months ago. She was not married at the time, but he believes she has subsequently married. She lives in Iraq with her brothers and sister. Applicant has contact with her once or twice a year.<sup>16</sup>

Sister #6 was born in 1974. She is a teacher, who is married and has no children. Applicant does not know her husband's occupation. He last spoke to her by phone in 2014.<sup>17</sup>

Applicant's two brothers and two of his sisters moved to another area of Iraq because it was safer and away from areas that ISIS had infiltrated. They share living quarters.<sup>18</sup>

Applicant also has a half-sister. She is his mother's daughter from his mother's first marriage. She was born in 1955. His last contact with her was in 2010. He does not know her husband's occupation.<sup>19</sup>

Applicant testified that he has supported the United States and its military forces for many years. He is loyal to the United States and no other country. He does not intend to return to Iraq to live. There is nothing there for him. He said that other than a few phone calls to his family there, his life is in the United States. Although not asked to do so, he said he is willing to sever all familial ties in Iraq. His current responsibilities in Iraq are to escort supply convoys.<sup>20</sup>

## **IRAQ**

The United States Department of State warns that U.S. citizens in Iraq remain at high risk for kidnapping and terrorist violence and to avoid all 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. ISIS controls a significant portion of Iraq's territory. Within areas under ISIS control, the Iraqi government has little or no ability to control and ensure public safety.

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<sup>15</sup> Tr. 52, 65-67; GE 3.

<sup>16</sup> Tr. 54-55; GE 3.

<sup>17</sup> Tr. 53-57; GE 3.

<sup>18</sup> Tr. 54-57.

<sup>19</sup> Tr. 47-48, 57 58; GE 3.

<sup>20</sup> Tr. 65, 71.

Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. U.S. Government and western interests remain possible targets for attacks.

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.

There are significant human rights problems in Iraq to include: sectarian hostility, widespread corruption, lack of transparency at all levels of government and society that have weakened the government's authority and worsened effective human rights protections. Iraqi security forces and members of the Federal Police have committed human rights violations to include killing, kidnapping, and extorting civilians. There are also problems that include harsh and life-threatening conditions in detention and prison facilities, arbitrary arrest and lengthy pretrial detainment, denial of fair public trial, limits on freedom of expression, freedom of the press, censorship of religion, limits on peaceful assembly, and societal abuses of women. ISIS is also responsible for human rights abuses.

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an applicant may deliberately or inadvertently fail to 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 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**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (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.

AG ¶ 7(a) requires evidence of a "heightened risk." The "heightened risk" required to raise this 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 or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Applicant has two brothers who are citizens and residents of Iraq. One brother is in the Iraqi Army and the other has ties to the Iraqi Ministry of Oil and Minerals. He has six sisters and a half-sister who are citizens and residents of Iraq. Applicant has ties of affection to them. He has infrequent contact with some of them throughout the year and has not had any contact with others for several years. Applicant's family residing in Iraq creates a heightened risk and a potential foreign influence concern.

The United States Department of State warns U.S. citizens against travel to Iraq because of continued instability and threats by terrorist organizations against U.S. citizens. It also has serious concerns about terrorist activities in Iraq that specifically target Americans. There are widely documented safety issues for residents of Iraq because of terrorists and insurgents. Applicant has supported the U.S. Government through his work as a translator and linguist and is willing to do so in the future. Numerous linguists, translators and advisors supporting U.S. forces, have family living in Iraq. Thousands of the U.S. and coalition armed forces and civilian contractors serving in Iraq are targets of terrorists along with Iraqi civilians who support the Iraq Government and cooperate with coalition forces.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

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 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 Iraq place a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Iraq do not pose a 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 Iraq.

While there is no evidence that intelligence operatives or terrorists from 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 an enormous problem with terrorism. Applicant's relationships with relatives living in Iraq create a potential conflict of interest because terrorists could place pressure on his family living there 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. Substantial evidence was produced of Applicant's contacts with family in Iraq and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 are potentially applicable:

- (a) the nature of the relationship 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 and interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and
- (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.

Applicant's siblings are citizens and residents of Iraq. Several he has not seen for many years. He has had infrequent visits with others and talks to them infrequently during the year. Applicant's contact with his family is infrequent, but not casual. AG ¶ 8(c) does not apply.

AG ¶ 8(b) applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has served in dangerous situations with U.S. forces from 2004 to 2010. For his service, he was granted an SIV. He returned to serve with U.S. military forces in Iraq in 2017. Applicant served in combat operations. Applicant became a U.S. citizen, bought a home, and has considerable

financial interests in the United States. He lives with a brother who also served with the United States forces in Iraq and was granted an SIV.

Applicant's years of support to the United States military in Iraq as a linguist, including the dangers that service entailed, weigh heavily towards mitigating security concerns. Applicant is currently serving as a linguist for supply convoys in support of the U.S. Armed Forces. He continues to support the United States' goals in Iraq. He has expressed his loyalty and commitment to the United States.

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 resident of Iraq. Like every other resident of Iraq, any of his relatives who may be living in Iraq are at risk from terrorists.

Two of Applicant's brothers have contacts with government entities in Iraq. One is in the Army and another has worked with a ministry department. I have considered these contacts. It is important to be mindful of the United States' huge investment of manpower and money in Iraq, and Applicant has supported U.S. goals and objectives in Iraq. Applicant and his siblings 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 Iraq from lawless elements in Iraq.

Applicant's possible future connections to his relatives living in Iraq are infrequent and less significant than his connections to the United States. His employment in support of the U.S. Government, financial interests and bonds to the United States, performance as a linguist to U.S. forces, and U.S. citizenship are important factors weighing towards mitigation of security concerns. He owns a house in the United States and has significant financial interests. Based on Applicant's deep and longstanding relationship and loyalty to the United States, he can be expected to resolve any conflict of interest in favor of the United States. His connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

### **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), 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 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 some warrant additional comment.

Applicant serves as a linguist for a federal contractor and has actively supported the U.S. military mission in Iraq for many years. He understands the risks associated with having family in Iraq. Based on Applicant's past commitment and service under combat and dangerous conditions and his continued loyalty to the United States, he has 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-1.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge