



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



In the matter of:)	
)	
)	ISCR Case No. 18-00148
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: John Martinson, Personal Representative

01/31/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. No disqualifying concerns were established under Guideline C, foreign preference. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On March 23, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and C. The DOD CAF acted 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 implemented on June 8, 2017 (AG).

Applicant answered (Ans.) the SOR on April 26, 2018, and requested a hearing before an administrative judge. On September 18, 2018, the case was assigned to me.

On October 18, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 28, 2018. I convened the hearing as scheduled. Government exhibits (GE) 1 through 4 were admitted in evidence without objection. The Government's exhibit list and request for administrative notice were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A through C, which were admitted without objection. DOHA received the transcript (Tr.) on December 7, 2018.

Procedural Rulings

I took administrative notice of facts concerning Iraq. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.

Administrative or official notice is the appropriate type of notice used for administrative proceedings.¹ Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports.²

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.b-1.e, with explanations. He denied the allegations in SOR ¶¶ 1.a and 2.a. His admissions are incorporated into the findings of fact. After a thorough and careful review of the evidence, I make the following additional findings of fact.

Applicant is 35 years old. He was born in Iraq in 1983. He lived there until he immigrated to the United States in 2008. He became a U.S. citizen in 2013. In 2006, he received his bachelor's degree from an Iraqi university. He is employed in the private sector, but is pursuing a linguist position with a federal contractor, for which he is seeking a security clearance. He has never been married and has no children.³

The SOR alleged that Applicant's mother, four brothers and his sister are all residents and citizens of Afghanistan. It further alleged that one brother works for the Iraqi National Police. The SOR also alleged that Applicant has one friend, who is a resident and citizen of Iraq, and who is also currently enlisted in the Iraqi Army; and a second friend, a resident and citizen of Iraq, who is employed by the Iraqi Counterterrorism unit. The SOR alleged that Applicant admitted his allegiance to the United States and Iraq was divided to about 50 percent to each country.

¹ See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986).

² See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

³ Tr. at 20, 22, 65, 78; GE 1.

Applicant was hired locally as a linguist from 2004 to 2008 for U.S. forces in Iraq. He provided linguist services at several different locations and for several different missions. In approximately 2005, he began working at a police academy providing linguistic services to U.S. forces who were training Iraqi police candidates. He later transitioned to missions that had him working “outside the wire” providing linguistic services to U.S. forces at roadside checkpoints and providing liaison services between U.S. forces and local leaders. His work was hazardous. He experienced frequent rocket propelled grenade (RPG) attacks from insurgent forces. In approximately 2007, he began providing linguistic services at an Iraqi detention facility. At this facility, where approximately 20,000 Arabic-speaking detainees were held, Applicant translated sensitive written and oral documents for U.S. forces. He was awarded a certificate of appreciation from a U.S. Army Military Police Battalion for his work at the detention facility.⁴

The current status of Applicant’s relatives listed in the SOR is as follows:

1. Applicant’s mother (M). M is 68 years old and in poor health. She immigrated to the United States in 2015. She is a legal resident alien in this country (green card holder). She lives with Applicant who provides for her. She is currently visiting Iraq. She returned to Iraq in May 2018 to visit her husband’s gravesite (he passed away in January 2018). She intended to stay approximately 15 days. She experienced bleeding while there and was diagnosed with cancer. Currently, she is undergoing chemotherapy and unable to travel. She is staying in the house her husband owned presently occupied by her sons and daughter. She intends to return to the United States when she is healthy enough to do so. She has no affiliations with the Iraqi government or military.⁵

2. Applicant’s four brothers and sister (B1-B4, S1). B1 immigrated to this country in 2015 with his mother. He is a legal resident alien (green card holder). He lives with Applicant and their mother. He works for a private sector employer. He took his mother to Iraq in May 2018, but returned alone after 15 days when she experienced medical issues. B2 is a resident and citizen of Iraq. He works for the Iraqi National Police as a corrections officer. Applicant has infrequent contact with him, possibly on a quarterly basis through social media. B3 is a resident and citizen of Iraq. He is unemployed. He has no government or military affiliation. Applicant has contact with him approximately twice a year. B4 is a resident and citizen of Iraq. He works in customer service for a telecommunication company. He has no government or military affiliations. Applicant has quarterly contact with him. S1 is a resident and citizen of Iraq. She is a school teacher. Applicant has quarterly contact with her. All of Applicant’s siblings were aware of his linguist work for U.S. forces from 2004 to 2008. There were no repercussions as a result.⁶

⁴ Tr. at 23-25, 28-30, 34-35; Ans. (See attachment).

⁵ Tr. at 59-64; GE 3.

⁶ Tr. at 43-51; GE 3.

3. Applicant's two friends (F1 and F2). Both F1 and F2 are residents and citizens of Iraq. Applicant met them when he was attending college. Applicant's last contact with F1 was in 2016. Applicant knew that F1 was in the Iraqi Army at one time, but now he has no idea as to F1's status. Applicant's last contact with F2 was in April 2017. He knew that F2 was working for an Iraqi counterterrorism unit. At present, Applicant has no idea what F2 does for a living.⁷

Applicant addressed his apparent statement to a defense investigator in June 2017 during his background interview. The investigator noted in his report that Applicant stated that his allegiance to the two countries was 50 percent each. In March 2018, when given a chance to review the investigator's summarized interview, Applicant explained that he meant that he still appreciated the culture, history, and the arts of Iraq, however, he has no allegiance to the government of Iraq. His undivided allegiance is to the United States as demonstrated by his willingness to put himself in harm's way while working with U.S. forces in Iraq. During his testimony, he reiterated his allegiance to the United States, while also explaining that he will always love the history and culture of Iraq. He documented that his Iraqi passport expired in 2016 and has not been renewed. He has a current U.S. passport that was issued in 2017.⁸

Character Evidence.

Applicant supplied character references from four military commanders associated with his translator duties from 2007 to 2008. All those commanders noted his trustworthiness and other positive character traits that made him a valuable asset. Additionally, the Deputy Task Force Commander, a Marine major general, stated that Applicant "risked his life in support of Coalition Forces in Iraq while other interpreters have been kidnapped, killed, or quit. [Applicant's] dedication, commitment, and support to our cause no doubt saved the lives of American soldiers."⁹

Administrative Notice.

The U.S. State Department warns U.S. citizens against travel to Iraq as travel within the country remains dangerous. The U.S. Embassy warns that U.S. citizens are at high risk for kidnapping and violence and to avoid all but essential travel to Iraq. The U.S. government considers the potential threat to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines. The Islamic State of Iraq and Levant (ISIL) remained the greatest terrorist threat globally, maintaining a formidable force in Iraq and Syria.¹⁰

⁷ Tr. at 51-53; GE 3.

⁸ Tr. at 54-56; GE 2; AE A-B.

⁹ Ans. (See attachments).

¹⁰ HE II.

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 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(a), the entire process is a careful weighing 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, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 explains the security concern about “foreign contacts and interests” as follows:

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 indicates conditions that could raise a security concern and may be disqualifying 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.

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, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship between Iraq and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships

with his relatives and friends living in Iraq does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives and friends living in Iraq who might be coerced by governmental entities, or pressured to assist 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."¹¹ 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.

While there is no evidence that intelligence operatives from Iraq seek or have sought classified or economic information from or through Applicant, his relatives, or his friends living in Iraq, it is not possible to rule out such a possibility in the future. AG ¶¶ 7(a), 7(b), and 7(e) apply based upon Applicant's family members and two friends who are residents and citizens of Iraq, and his mother and B1's living arrangements with him.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, 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 U.S.;
- (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; 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.

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Applicant credibly testified that he has limited contact with his relatives and friends in Iraq. He presented sufficient evidence to establish that it is unlikely that he would be placed in a position to choose between the interest of his relatives and friends living in Iraq and those of the United States. He already has demonstrated that he would put the United States' interests first when he worked as a translator from 2004 to 2008 while his family members were living in Iraq. AG ¶ 8(a) applies.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He worked as a translator from 2004 to 2008 performing different missions for U.S. forces where he earned praise for his loyalty, bravery, and trustworthiness while serving in harm's way. He became a U.S. citizen in 2013. He currently works and lives in the United States with his mother and B1. The evidence supports that Applicant has longstanding ties to the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies. His contact with F1 and F2 is so infrequent, he does not know the current status of either. AG ¶ 8(c) applies.

Guideline C, Foreign Preference

AG ¶ 9 explains the security concern about "foreign preference" as follows:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 indicates conditions that could raise a security concern and may be disqualifying in this case:

(f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

While being questioned by a defense investigator, Applicant was trying to explain that although he was a proud U.S. citizen, a country he risked his life for, he would always have a love for the culture, history, and arts of his native country of Iraq. The investigator misconstrued Applicant's explanation as an admission that his allegiance was split 50/50 between the two countries. Applicant credibly denied such was the case. Applicant's actions and words clearly indicate that his preference is toward the United States over Iraq. AG ¶¶ 9 and 10(f) have not been established.

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. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance. I considered the glowing comments by his commanders, who attested to Applicant's loyalty and commitment to U.S. forces. I also considered his strong ties to this country as a translator serving in harm's way while assisting U.S. forces. He has demonstrated his longstanding loyalty to the United States. Therefore, he provided sufficient evidence to mitigate the security concerns. His actions also support his assertion that his allegiance is to the United States over Iraq.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence, were mitigated and that no disqualifying conditions were established under Guideline C.

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: Subparagraphs 1.a: - 1.e:	FOR APPLICANT For Applicant
Paragraph 2, Guideline C: Subparagraph 2.a:	FOR APPLICANT 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge