



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



In the matter of:)	
)	
)	ISCR Case No. 18-00342
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esquire, Department Counsel
For Applicant: Mark Myers, Esquire

08/21/2019

Decision

HOGAN, Erin C., Administrative Judge:

On February 8, 2019, 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 and Guideline E, Personal Conduct. 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 adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On March 28, 2019, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 15, 2019. The case was assigned to me on June 5, 2019. On June 11, 2019, a Notice of Hearing was issued, scheduling the hearing for July 31, 2019. Applicant worked at an overseas location and traveled back to the United States for hearing. The hearing was held as scheduled. During the hearing, the Government offered nine exhibits. Government exhibits 1-9 were admitted without objection. Applicant offered 17 exhibits, which were admitted as Applicant Exhibits (AE) A – Q, without objection. The Government and the Applicant requested administrative notice be taken of certain facts regarding the country of Iraq. I re-marked the administrative notice documents as

Administrative Notice Document I (Admin Not I – Government) and Admin Not II (Applicant). The transcript was received on August 9, 2019. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Administrative Notice - Iraq

A coalition of countries led by U.S. and British forces invaded Iraq on March 20, 2003. Dictator Saddam Hussein was deposed and on May 12, 2003, the United States established the Coalition Provisional Authority as the interim civil authority in Iraq. About one year later, the Coalition Provisional Authority transferred sovereignty to the new Interim Iraqi Government led by Prime Minister Ayad Allawi. Throughout the governance of the Coalition Provisional Authority and the peaceful transfer of power, the role of Iraqi interpreters was vital to U.S. military success. Recognizing the role of local Iraqi interpreters – and the dangers they faced as a result of their assistance to the United States – Congress authorized a “Special Immigrant Visa” program that allowed local interpreters who served with distinction to immigrate to the United States.

Since 2005, the U.S. government has approved more than \$18.6 billion worth of foreign military sales to Iraq. U.S. security assistance supports the development of a modern, accountable, and professional Iraqi military capable of defending Iraq and its borders. U.S. security assistance programs also promote civilian oversight of the military, adherence to the rule of law, and the respect for human rights, while simultaneously increasing the Iraqi military’s capability to respond to threats and counter-terrorism operations. The U.S. Embassy Baghdad maintains the Office of Security Cooperation – Iraq to further these goals and to facilitate Iraq’s role as a responsible security partner, contributing to the peace and security of the region.

Iraq is a constitutional parliamentary republic. The outcome of the 2014 parliamentary elections generally met international standards of free and fair elections and led to the peaceful transition of power from former Prime Minister Nouri al-Maliki to Prime Minister Haider al-Abadi.

The U.S. Department of State warns that travel within Iraq remains very dangerous and the ability of the U.S. Embassy to assist U.S. citizens is extremely limited. U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including ISIS. Such groups regularly attack Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq.

Severe human rights problems are widespread in Iraq. Sectarian hostility, widespread corruption, and lack of transparency at all levels of government and society weakened the government’s authority and worsened effective human rights protections. Problems include harsh and life-threatening conditions in detention and prison facilities; arbitrary arrests and lengthy pretrial detention; limits on freedom of expression to include press, social, religious and political restrictions in academic and cultural matters; discrimination against and societal abuse of women and ethnic, religious, and racial minorities; seizure of property without due process and limitations of worker rights.

Findings of Fact

Applicant is a 32-year-old linguist employed by a Department of Defense contractor since 2017. He is currently working at an overseas location supporting the U.S. military. He was granted a security clearance in 2016 and is applying to maintain his security clearance. Applicant was born, raised, and educated in Iraq. He received an associate's degree from a technical college in Iraq. He worked as a contract linguist/translator/cultural advisor with the U.S. military in Iraq from 2007 to 2008 and in 2011. In 2009, a local terrorist group threatened Applicant. He applied for and was granted a special immigrant visa (SIV). He immigrated to the United States in October 2011. He became U.S. citizen in 2016. He is married, but is separated from his wife and has no children. (Tr. 22-26, 51; Gov 1; AE C; AE G; AE H; Response to SOR) (Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.)

When Applicant first immigrated to the United States, he worked several jobs and endured several periods of unemployment. During his periods of unemployment, he lived off savings and received some help from his parents. His two brothers immigrated to the U.S. in 2013. Applicant lived with his two brothers for about a year. They had a falling out in May 2014, and Applicant has had no contact with his brothers since that time. Applicant had a brief marriage in 2014, which was annulled. (Tr. 47-57; Gov 1; Response to SOR)

In March 2015, Applicant enlisted in the U.S. Army as an active-duty translator. He learned how to operate in a dangerous environment. He was trusted to interpret conversations, documents, and other forms of communications to assist the U.S. military. He trained Iraqi armed forces, he worked with high profile individuals, and was involved in tactical missions, some of which resulted in attacks in some of the most dangerous locations in Iraq. In June 2017, he was discharged from the U.S. Army for medical reasons with a discharge characterized as Honorable. After being discharged from the U.S. Army, he was hired as a contract linguist in 2017. (Tr. 23; Gov 1; AE B; AE F; Response to SOR)

Foreign Influence

The SOR raises security concerns because Applicant has family members who are citizens of Iraq and several who reside in Iraq. Specifically:

SOR ¶ 1.a: Applicant's spouse is a dual citizen of Iraq and Canada and resides in Canada. Applicant admits that his wife is a dual citizen of Iraq and Canada. They married in April 2016. Applicant's spouse did not like that Applicant was always deployed and never home. They are informally separated. Applicant does not know where his spouse currently resides. His last contact with her was around November 2017. Once he locates where she is, he intends to file for divorce because they both want different things out of life. (Tr. 26-27, 57-62; Gov 1 at 33-34; Response to SOR)

SOR ¶ 1.b: Applicant's mother is a citizen and resident of Iraq. She is retired and was formerly employed by an Iraqi government agency in a senior administrative position. Applicant's mother receives a government pension. He loves his mother and contacts her weekly or biweekly depending upon his schedule. (Tr. 28-30, 63, 72-73; Response to SOR)

SOR ¶ 1.c: Applicant's father is a citizen and resident of Iraq. He retired from the Iraqi Army as a senior enlisted person. He receives a government pension. Applicant contacts him about once or twice a month. (Tr. 32, 63-64, 81-82; Response to SOR)

SOR ¶ 1.d: Applicant's brother is a citizen and resident of Iraq. He is employed as an engineer with an Iraqi government agency. Applicant contacts his brother about 3-4 times a year. (Tr. 33-35, 70; Response to SOR)

SOR ¶ 1.d: Applicant's two sisters are citizens of and reside in Iraq. One is a dentist who works for an Iraqi government agency. The other sister is a computer engineer for an Iraqi government agency. Applicant talks to his sisters about 3-4 times a year. (Tr. 35-36, 71-72; Response to SOR)

The last time Applicant visited with his family members who are citizens of and reside in Iraq was in December 2018. His mother was in the hospital. They believed she was on her death bed. Applicant stayed for three or four days. His mother recovered from her illness. Prior to that time, he had not visited with his mother in person for seven years. All of Applicant's family members in Iraq hope to immigrate to the United States. They have applied for refugee status and are awaiting their second interview with U.S. Customs and Immigration. (Tr. 30, 74; Response to SOR)

Applicant provided information about his family members each time he completed a counter-intelligence update when he was employed with DOD contractors while he was a citizen of Iraq, and while on active duty in the U.S. Army. (Gov 3; Gov 4; Response to SOR)

Financial Considerations

Under the Financial Considerations concern, it is alleged that Applicant owes an auto dealership approximately \$30,121 related to a voluntary automobile repossession. Applicant purchased a car in State A (where he was undergoing military training) before being assigned to another duty station in State B. After Applicant moved to State B, the automobile dealer attempted to modify the terms of the purchase contract on two occasions. Each time, the dealer increased the cost of the purchase price. Applicant consulted a legal assistance attorney, who advised him the automobile dealer breached the contract. Applicant hired a civilian attorney who concurred and advised Applicant to ship the car back to the dealer. Applicant had only had the car for a few weeks and he paid to have the car shipped back to the dealer in State A. His private attorney wrote a letter to the dealer outlining the situation and alleging fraud on their part. The debt is no longer on Applicant's credit report. Applicant has no other delinquent debts and has an excellent credit rating. (SOR ¶ 2.a: Tr. 36-39; 75-76; Gov 5 at 6; AE A; AE K; AE L; Response to SOR)

Personal Conduct

Under Personal Conduct, it is alleged that Applicant received nonjudicial punishment around February 2017, for violations of Articles 91 and 134 of the Uniform Code of Military Justice. Applicant was deployed to Turkey at the time he received nonjudicial punishment. He had filed a formal complaint against several members of his squadron on January 8, 2017 and February 2017, because he felt he was being harassed and that his unit was a hostile work environment. (AE P) On 18 January 2017, Applicant was placed on a medical profile for injuries to his left shoulder. The profile included no running, no pushups, and no sit-ups for 90 days. The profile also ordered Applicant not lift his left arm and to engage in minimal movement with his left arm. Applicant complained to the medical staff that he was being harassed by members of his unit. (Tr. 39-42; 76-78; AE P; AE Q; Response to SOR)

Applicant testified he received nonjudicial punishment because he failed to follow orders to stand at parade rest. He could not do so because of his shoulder. Applicant claims his fellow soldiers set him up in order to diminish his credibility. Applicant provided a copy of the complaints he made about the conduct of several members in his unit and a copy of his medical profile. He did not have a copy of the Article 15 and the Article 15 was not in the case file. He disclosed the Article 15 on his most recent security clearance application in July 2017. This is the only time Applicant has been punished under Article 15. Applicant believed the Article 15 was unfair. Discouraged by the treatment he received, Applicant opted to be medically discharged. He received an honorable discharge. (Tr. 39-42, 76-78; Gov 1 at 30-31; AE O; AE P; AE Q; Response to SOR)

Applicant applied to become a contract linguist after his discharge from the U.S. Army. He has had no issues in his current position. (Tr. 44)

Whole-person Factors

Applicant's was counseled on his duty performance in June 2016 and in June 2017. Both were favorable. In his 2016 counseling he was praised for helping other teammates while on temporary duty in Jordan. His supervisor wrote "You are a good soldier in my squad when it comes to any task you are willing to take it." In June 2017, Applicant was told he was a valuable member of the team during an annual exercise in Jordan. Specifically:

As a member of the exercise, you have shown great attitude towards work and have delivered all your assignments on time. I am encouraging you to keep the same professional manner. You also showed respect towards your superiors and subordinates from both, the U.S. and Jordanian side. You have performed your responsibilities in a professional manner and have showed the best of you. (AE N)

Staff Sergeant R. worked with Applicant from late 2018 to early 2019, in Jordan. Applicant was a civilian contract linguist. Sergeant R. states that Applicant is a phenomenal linguist and has been asset to his organization. His prior military

experience was helpful. Applicant's skill at interpretation quickly made him a preferred linguist to facilitate training and professional relations between U.S. and Jordanian armed forces instructors. He describes Applicant as "intelligent, loyal and excellent at his profession." (AE D at 1)

Captain M. personally attests to Applicant's intelligence, fortitude, and professionalism. Applicant has exceptional qualities as a leader and interpreter. He states:

[Applicant] possesses a breadth and depth of doctrinal knowledge seldom seen in most interpreters. [Applicant] has the natural ability to express complicated and technical information clearly and concisely. His patience and compassion will serve him well as a linguist and interpreter and guarantee him continued success as a leader. Applicant has continually adapted to any situation, overcoming differences and often mending international disagreements and preventing them from escalating. (AE D at 2)

Applicant has received several certificates of appreciation related to his duties as a linguist in deployed locations. (AE E) He provided several photographs which reflect his service as a linguist in support of the U.S. military. (AE E)

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 useful 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 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 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 applicant or proven by Department Counsel. . . .” The applicant 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 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 Executive Order (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 Government’s concern under Foreign Influence:

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 lists conditions that could raise a security concern and may be disqualifying. The following are applicable to Applicant’s 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.

In Applicant's case, AG ¶ 7(a) and AG ¶ 7(b) apply. 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). Applicant's parents, two sisters and one brother are citizens of and reside in Iraq. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Iraq's serious human rights problems, and its issues with terrorism. The government of Iraq has made some progress, but a heightened risk remains. Applicant's family in Iraq also create a potential conflict of interest between his obligation to protect classified information and his desire to help his family members by providing that information. The risk is also heightened because Applicant's parents are retired from the Iraqi government and receive pensions from the Iraqi government. His three siblings who reside in Iraq currently work for the Iraqi government.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b). The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. The following mitigating condition applies:

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

I considered the totality of Applicant's ties to Iraq. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

At great risk to himself, Applicant worked for the U.S. government in Iraq from 2007 to 2008 and in 2011 while he was an Iraqi citizen. His efforts resulted in the U.S. government granting Applicant a SIV. Applicant immigrated to the United States in October 2011 and settled in the United States. He worked several jobs and then

enlisted in the U.S. Army in 2015. He became a U.S. citizen in May 2016. After his Army service, Applicant became a contractor supporting the U.S. government as a linguist in overseas locations. While previously working as contract linguist in Iraq, he worked alongside U.S. forces under combat conditions. In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. *See, e.g.*, ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. *See, e.g.*, ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

I considered Applicant's longstanding commitment to the United States as well as his favorable contributions to national security. He worked under dangerous conditions as a linguist for the U.S. government. His efforts resulted in him being granted permanent residency in the United States. He enlisted in the U.S. Army for over two years. He was medically discharged with an honorable discharge. The status of his family members in Iraq remained the same in his previous positions. Applicant demonstrated that he is trustworthy. Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable. The security concerns under Foreign Influence are mitigated.

Guideline F: Financial Considerations

The security concern relating to the guideline 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.

Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying condition that is relevant to Applicant's case include:

(a) inability to satisfy debts.

Applicant's credit report listed a \$30,000 debt related to a voluntary automobile repossession. AG ¶ 19(a) applies.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's case:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

This debt was the result of an automobile dealership attempting to illegally change the terms of Applicant's automobile contract on two occasions. Applicant consulted a legal assistance attorney, hired a private civilian attorney to represent him when he returned the car based on breach of contract. Aside from this debt, Applicant has no other delinquent debts. This was a circumstance which is unlikely to recur and does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. Applicant was a victim of predatory lending practices. He took reasonable steps to resolve this issue. The concern raised under financial considerations is mitigated.

Guideline E – Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security or adjudicative processes.

The following disqualifying conditions potentially apply to Applicant's case:

AG ¶ 16(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information, This includes, but is not limited to, consideration of: (3) a pattern of dishonesty to rule violations.

By his own admission, Applicant received Article 15 nonjudicial punishment in March 2017. AG ¶ 16(d) applies related to rule violations. I find Applicant is truthful so there is no issue with a pattern of dishonesty.

Under Guideline E, the following mitigating condition applies in Applicant's case:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's nonjudicial punishment was a departure from otherwise honorable military service. It is clear based on the Applicant's testimony, the complaints he provided, and his medical records during the time he received the Article 15 that Applicant felt he was being harassed by members of his unit. He opted to be medically discharged and received an honorable discharge characterization. Applicant has had no issues in his current job while serving as a contract linguist in an overseas location. The letters from SSgt R. and Capt M. attest to his outstanding work ethic and dedication to his job. The circumstances that led to his Article 15 are minor and they are unlikely to recur. The Personal Conduct concern is mitigated.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's gratitude to the U.S. government for accepting him as a refugee and granting him U.S. citizenship. I considered his support of the U.S. government overseas both before and after becoming a U.S. citizen. I considered Applicant's years of service as a contract linguist in Iraq both before and after immigrating to the U.S. I considered Applicant's military service. He had one minor incident involving Article 15 nonjudicial punishment. The events that led to his punishment are questionable and unfortunate. Applicant has since moved on and continues to be a dedicated and successful contract linguist in support of U.S. Forces overseas.

I considered the reference letters and awards indicating the valuable service Applicant provided as a linguist for the U.S. government working on sensitive projects. His lengthy and dedicated history as a linguist in support of the U.S. military outweigh foreign influence concerns because his parents, brother and two sisters are citizens of and reside in Iraq.

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.e:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	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 interests of the U.S. to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge